Supreme Court, U. S.
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76-4594

In the

Supreme Court of the United States

OCTOBER TERM, 1976

COMMUNICATIONS WORKERS OF AMERICA, an unincorporated labor association,
Appellant,
v.
WESTERN ELECTRIC COMPANY, INCORPORATED, a New York corporation, STATE OF COLORADO, DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF LABOR, JAMES M. SHAFFER, Executive Director, State of Colorado, Department of Labor and Employment, Division of Labor, INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, HENRY C. KIMBROUGH, in his capacity as a member of the Industrial Commission of the State of Colorado, ALBERT F. MANGAN, in his capacity as a member of the Industrial Commission of the State of Colorado, and KENNETH C. RUSSELL, in his capacity as a member of the Industrial Commission of the State of Colorado, and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, a Colorado corporation,
Appellees.

APPENDIX TO JURISDICTIONAL STATEMENT
APPEAL FROM THE SUPREME COURT OF THE STATE OF COLORADO

JOHN W. McKENDREE
LAW OFFICES OF JOHN W. McKENDREE
1050 Seventeenth St., Suite 2500
Denver, Colorado 80202
Attorneys for Appellant

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APPENDIX A

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER
STATE OF COLORADO

Civil Action Nos. C-18-238 and C-18239 (Consolidated)

Courtroom No. 1

COMMUNICATIONS WORKERS OF AMERICA, (an unincorporated labor association), Plaintiff, vs. WESTERN ELECTRIC COMPANY, INCORPORATED (a New York corporation); STATE OF COLORADO, DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF LABOR; JAMES M. SHAFFER, Executive Director, State of Colorado, Department of Labor and Employment, Division of Labor; INDUSTRIAL COMMISSION OF THE STATE OF COLORADO; HENRY C. KIMBROUGH, in his capacity as a member of the Industrial Commission of the State of Colorado; ALBERT F. MANGAN, in his capacity as a member of the Industrial Commission of the State of Colorado; and KENNETH C. RUSSELL, in his capacity as a member of	) FINDINGS OF FACT AND CONCLUSIONS OF LAW

the Industrial Commission of Colorado; and)
THE MOUNTAIN STATES TELEPHONE)
AND TELEGRAPH COMPANY (a Colorado)
corporation),)
Defendants.)

THIS MATTER is before the Court pursuant to a record of evidence stipulated by the parties. On that basis, on the basis of briefs submitted by certain of the parties and on the basis of counsel's arguments and comments to Court, this Court makes the following findings of fact and conclusions of law in accordance with Colorado Rule of Civil Procedure 52(a).

FINDINGS OF FACT

1. The plaintiff, Communications Workers of America (hereafter CWA), is an unincorporated labor organization which has its international headquarters in Washington, D.C., and its principal Colorado place of business in Denver. At all times relevant hereto, and under 1968 and 1971 collective bargaining agreements, it lawfully was and is entitled to represent as exclusive bargaining agent certain employees of the industrial field forces of the Service Division of Western Electric Company, Incorporated (hereafter Western Electric), in the several states of the United States of America, including the State of Colorado. Similarly, as exclusive bargaining agent, CWA also lawfully was and is entitled to represent certain employees in the Plant and Traffic Departments of defendants The Mountain States Telephone and Telegraph Company (hereafter Mountain Bell).

2. Defendant Western Electric, is a New York corporation, duly authorized to do and is doing business in the State

of Colorado and manufactures, supplies and furnishes services and materials to Bell System associated companies, including Defendant Mountain Bell, in the several states of the United States of America.

3. Defendant Mountain States Telephone and Telegraph Company is a Colorado corporation duly authorized to do and is doing business is the states of Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Wyoming and El Paso County, Texas, under the trade name Mountain Bell.

4. Defendant James M. Shaffer is the lawfully designated and selected executive director of the Department of Labor and Employment, Division of Labor, for the State of Colorado, and, as such, has the responsibility to enforce the provisions of the Colorado Labor Peace Act, C.R.S. §80-4-1, *et seq.*, (1963 as amended).

5. Defendants State of Colorado, Department of Labor and Employment, Division of Labor; Industrial Commission of the State of Colorado; and members Kimbrough, Mangan and Russell, and their successors, in their capacities as members of the Industrial Commission of the State of Colorado are vested with certain authority in accordance with C.R.S. §80-4-1, *et seq.*, (1963 as amended).

6. Defendant Western Electric made and entered into a written contract sometimes referred to as a collective bargaining agreement, denominated as Contract CWA-12 with plaintiff on or about May 1, 1968, which contract amended and extended a contract between the parties denominated as Contract CWA-11, covering certain communication equipment workers of the installation field forces of the Service Division of said defendant, which contractual arrangements have, at

all times relevant and material herein until July, 1971, been in full force and effect. Article 24 of said contract CWA-12 reads, in pertinent part, as follows:

ARTICLE 24

Maintenance of Union Dues

1. Each Employee who is a member of the Union:

(a) on or after the 30th calendar day following the beginning of his employment, or

(b) on or after the effect date of this contract whichever is the latest, shall, as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the final termination of this contract, except that each such Employee may, within the ten (10) day period immediately preceding the termination date of this contract, terminate his obligations to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company of his withdrawal from membership in the Union.

1.1 Said condition of emplayment shall reapply to any such Employee after his return to the bargaining unit following any period of formal separation* therefrom, provided such Employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

*Includes:
Transfers out of the bargaining unit.
Removal from the payroll of the Company.
Leaves of Absence of more than one (1) month duration.

2. The provision of this Article 24 shall not be effective if inconsistent with the law of the applicable State.

3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this Aritcle 24.

7. Because job clerks also are employed in the installation field forces of the Service Division of said Defendant, Western Electric made and entered into a written contract sometimes referred to as a collective bargaining agreement with plaintiff covering said employees and denominated as Contract CWA-JC-12 on or about May 1 ,1968, which contract amended and extended a contract denominated as Contract CWA-JC-11 between said parties, and which contractual agreements have at all times relevant and material herein until July, 1971, been in full force and effect. Article 23 of said Contract CWA-JC-12 reads in pertinent part as follows:

ARTICLE 23

Maintenance of Union Dues

1. Each Employee who is a member of the Union:

(a) on or after the 30th calendar day following the beginning of his employment, or

(b) on or after the effective date of this contract, whichever is the latest, shall, as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the final termination of this contract, except that each such Employee may, within the 10 day period immediately preceding the termination date of this contract terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying

both the Union and the Company of his withdrawal from membership in the Union.

1.1 Said condition of employment shall reapply to any such Employee after his return to the bargaining unit following any period of formal separation* therefrom, provided such Employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

*Includes:
Transfers out of the bargaining unit.
Removal from the payroll of the Company.
Leaves of Absence of more than one (1) month duration.

2. The provisions of this Article 23 shall not be effective if inconsistent with the law of the applicable State.

3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this Article 23.

8. Defendant Mountain Bell made and entered into a written contract sometimes referred to as a collective bargaining agreement, on or about May 9, 1968, with the plaintiff, covering certain employees in the Plant Department of said defendant, which Agreement reads in pertinent part as follows:

"2.1 The Company and the Union agree that they will not interefere with the rights of employees to join or refrain from joining the Union and agree that they will not in any manner, because of an employee's membership

or nonmembership therein directly or indirectly discriminate against, interfere with, coerce, restrain, discharge, demote, transfer, or discipline any employee.

. . . .

"14.1 Each employee who is a member of the Union on or after the 30th calendar day following the beginning of his employment, or on or after the effective date of this Agreement, whichever is the later, shall as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the termination of this Agreement, except that each such employee may, within the 10-day period immediately preceding May 9, 1971, upon which date the Agreement terminates, terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company in writing of his withdrawal from membership in the Union.

"14.2 Said condition of employment shall reapply to any such employee after his return to the bargaining unit following any transfer out of the bargaining unit, any removal from the payroll of the Company, or any leave of absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

"14.3 The provisions of this Article shall not apply to any employee in any state in which the application of such provision would be inconsistent with the law of such State.

"14.4 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article."

9. The defendant, Mountain Bell, made and entered into a written contract sometimes referred to as collective bargaining agreement, on or about May 9, 1968, with the plaintiff, covering certain employees in the Traffic Department of the defendant, which Agreement reads in pertinent part as follows:

> "1.1 The Company, its officers and supervisors, shall not interfere with the rights of employees to become and remain members of the Union and shall not in any manner, directly or indirectly, discriminate against, interfere with, coerce, restrain, discharge, demote, transfer or discipline any employee by reason of his or her membership or non-membership in the Union.
>
> . . . .
>
> "Article 15
>
> "Section 1: Maintenance of Dues
>
> "1.1 Each employee who is a member of the Union on or after the 30th calendar day following the beginning of her employment, or on or after the effective date of this Agreement, whichever is the later, shall as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the termination of this Agreement, except that each such employee may, within the 10 day period, immediately preceding May 9, 1971, upon which date the Agreement terminates, terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company in writing of her withdrawal from membership in the Union.

> "1.2 Said condition of employment shall reapply to any such employee after her return to the bargaining unit following any transfer out of the bargaining unit, any removal from the payroll of the Company, or any Leave of Absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following her return to the bargaining unit.
>
> "1.3 The provisions of this Article shall not apply to any employee in any State in which the application of such provision would be inconsistent with the law of such State.
>
> "1.4 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article."

12. During the term of Mountain Bell's two collective bargaining agreements with CWA, numerous employees of the defendant in the State of Colorado and within the bargaining units covered by the provisions of the foregoing collective bargaining agreements were members of the plaintiff on or after the thirtieth calendar day following the beginning of their employment or on or after the effective date of said collective bargaining agreements and thereafter ceased paying or tendering to the union an amount equal to their periodic union dues. In each case where said individuals ceased payments of their periodic union dues, they did not cease payment within the ten day period immediately preceding the termination date of the applicable collective bargaining agreement, the "escape" period under said contracts. On or about June 3, 1970, and again on or about September 3, 1970, plaintiff demanded that Mountain Bell dismiss the employees who had so ceased paying or tendering to the union an amount equal to their periodic union dues and who, it was alleged, were in

violation of said contract provisions set out above in paragraphs 8 and 9. Defendant Mountain Bell refused to dismiss such employees contending that the above-cited provisions were of no effect in light of the provisions of the Colorado Labor Peace Act, C.R.S. §80-4-1 *et seq.* (1963, as amended).

11. During the term of Western Electric's contracts with plaintiff, CWA-12 and CWA-JC-12, numerous employees in the State of Colorado of defendant Western Electric in the appropriate bargaining unit covered by said contracts were members of plaintiff on or after the thirtieth calendar day following the beginning of their employment or on or after the effective date of the applicable collective bargaining agreement and ceased paying or tendering to the union an amount equal to their periodic union dues. In each case such cessation did not occur within the ten day period immediately preceding the termination date of the applicable collective bargaining agreement, the "escape" period under said contracts.

12. On or about June 5, 1970, P. J. Morgan, National Director of Plaintiff and its authorized agent in dealing with defendant Western Electric, addressed letters to Robert W. Benson, Labor Relations Manager and authorized agent of said defendant under the 1968 contracts referred to above demanding that said defendant take such action as is required under the aforesaid Articles 23 and 24, including termination of employment of said employees.

13. On or about June 16, 1970, the said Robert W. Benson, on behalf of the said defendant, replied by letter to National Director Morgan's letter of June 5, 1970, stating that, "Certain provisions of the laws of the State of Colorado prohibit an employer from entering into an agreement with representatives of its employees which provides for union security

unless the Industrial Commission of Colorado certifies that three-quarters or more of the bargaining unit employees voting in a referendum shall have voted affirmatively in favor of such an agreement." In said letter the said Robert W. Benson went on to describe the said defendant's position that,

". . .

> since no such referendum has been conducted among the bargaining unit employees based in Colorado, it would violate Colorado law to condition the employment of these employees upon the payment of union dues. Accordingly, we must deny your request that the Company terminate the above-named employees because of their alleged failure to pay dues to the Union because the contract articles have no effect in light of the provisions of the Colorado Labor Peace Act, C.R.S. 80-4-1 (1963), et seq., as amended.

Defendant Western Electric therefore refused to dismiss said employees.

14. An "all-union" referendum election pursuant to C.R.S. 80-4-1(1) (d) (1963) has not been held with respect to any of the aforesaid contracts.

15. No extant material or notes concerning the bargaining history and practices surrounding the applicable provisions of any of the aforesaid collective bargaining agreements exist to aid the court in interpreting their intent and the aforesaid contract Articles are the only evidence before this court concerning bargaining history.

16. In July, 1971, defendant Western Electric entered

into a written collective bargaining agreement effective August 14, 1971, after expiration of the "escape period" and ratification and approval by the members and President of plaintiff, denominated as contract CWA-13 and covering certain communication equipment workers of the installation field forces of the said Service Division of said defendant, which contractual arrangements have, at all times relevant and material herein from said date, been in full force and effect. Article 24 of said Contract CWA-13 reads in pertinent part as follows:

ARTICLE 24

Union Security

1. Each Employee who is a member of the Union on the date of ratification or approval of this Contract by the President of the Communications Workers of America, whichever is later, or who later becomes a member of the Union and all Employees hired on or after such date shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval or the date of later becoming a member or, in the case of Employees hired on or after such date of ratification or approval thirty (30) days after hire, whichever of these dates is later until the termination of this Contract, except that an Employee may terminate this condition of employment by giving written notice to the Company and the Union of such termination, and, if applicable, his or her withdrawal from membership in the Union, by registered mail, return receipt requested, and postmarked with the ten (10) day calendar period immediately preceding 11:59 P.M. July 27, 1971.

2. The condition of emplayment specified in Paragraph 1 shall not apply during the periods of formal separation* from the bargaining unit by any such Employee but shall reapply to such Employee on the thirtieth (30th) day following his or her return to the bargaining unit.

*The term "formal separation" includes transfers out of the bargaining unit, removal from the payroll of the Company, and Leaves of Absence of more than one (1) month duration.

3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this article.

4. This article shall apply only in those States and the District of Columbia where the law permits the Union to enter into this type of union security agreement. If during the term of this Contract the Union shall become duly authorized under the laws of any other State to enter into this type of union security agreement, the effective date of this article as to Employees in such State shall be the date upon which the Company receives proper written evidence from the Union that it is fully qualified to enter into such an agreement in such State.

17. In July, 1971, defendant Western Electric entered into a written collective bargaining agreement, effective on August 14, 1971, after expiration of the "escape period" and ratification and approval by the members and President of plaintiff, denominated as Contract CWA-JC-13 and covering job clerks employed in the installation field forces of the said Service Division of said defendant, which contractual arrangements have, at all times relevant and material herein from

said date, been in full force and effect. Article 23 of said Contract CWA-JC-13 reads in pertinent part as follows:

ARTICLE 23

Union Security

1. Each Employee who is a member of the Union on the date of ratification or approval of this Contract by the President of the Communications Workers of America, whichever is later, or who later becomes a member of the Union and all Employees hired on or after such date shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval or the date of later becoming a member or, in the case of Employees hired on or after such date of ratification or approval, thirty (30) days after hire, whichever of these dates is later until the termination of this Contract, except that an Employee may terminate this condition of employment by giving written notice to the Company and the Union of such termination, and, if applicable, his or her withdrawal from membership in the Union, by registered mail, return receipt requested, and postmarked within the ten (10) day calendar period immediately preceding 11:59 P.M., July 27, 1971.

2. The condition of employment specified in Paragraph 1 shall not apply during periods of formal separation* from the bargaining unit by any such Employee but shall reapply to such Employee on the thirtieth (30th) day following his or her return to the bargaining unit.

*The term "formal separation" includes, transfers out of the bargaining unit, removal from the payroll of

the Company, and Leaves of Absence of more than one (1) month duration.

3. The company may inform Employees and applicants for employment of their rights and obligations under the provisions of this article.

4. This article shall apply only in those States and the District of Columbia where the law permits the Union to enter into this type of union security agreement. If during the term of this Contract the Union shall become duly authorized under the laws of any other State to enter into this type of union security agreement, the effective date of this article as to Employees in such State shall be the date upon which the Company receives proper written evidence from the Union that it is fully qualified to enter into such an agreement in such State.

18. On or about the 18th day of July, 1971, Mountain Bell entered into a written collective bargaining agreement, with CWA, as representative of certain employees in the Plant and Traffic Departments of the company, which agreement reads in pertinent part as follows:

"2.1 The Company and the Union agree that they will not interfere with the rights of employees to join or refrain from joining the Union and agree that they will not in any manner, because of an employee's membership therein directly or indirectly discriminate against, interfere with, coerce, restrain, discharge, demote, transfer, or discipline any employee.

. . . .

"Article 21

"Modified Agency Shop

"21.1 Each regular employee who is a member of the Union on the date of ratification or approval of this agreement by the President of the Union, whichever is later, or who later becomes a member of the Union and all regular employees hired on or after that date shall as a condition of emplyoment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval or the date of later becoming a member or, in the case of regular employees hired on or after such date of ratification or approval, 30 days after hire, whichever of these dates is later until the termination of this contract, except that an employee may terminate this condition of employment by giving written notice to the Company and the Union of such termination, and, if applicable, his withdrawal from membership in the Union by registered mail, return receipt requested, and post-marked within the ten-day calendar period immediately preceding 11:59 P.M., July 28, 1971.

"21.2 Said condition of employment shall reapply to any such employee after returning to the bargaining unit following any transfer out of the bargaining unit, any removal from the payroll of the Company, or any leave of absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following return to the bargaining unit.

"21.3 The provisions of this Article shall not apply to any employee in any state in which the application of such

provision would be inconsistent with the law of such State.

"21.4 The Company may inform employess and applicants for employment of their rights and obligations under the provisions of this Article."

19. An "all-union" referendum election pursuant to C.R.S §80-4-6 (1) (d) (1963 as amended) has not been held with respect to the aforesaid 1971 collective bargaining agreements.

20. A controversy has arisen between plaintiff and defendants concerning the scope of applicability of the alleged prohibitory and/or regulatory provisions of the Colorado Labor Peace Act C.R.S. §§80-4-1 *et seq.* (1963, as amended), and the effect of such statutory scheme upon the construction of each and all of the aforesaid contractual provisions as between the plaintiff and defendants Western Electric and Mountain Bell.

21. Entry of a decree declaring plaintiff's and defendants' rights, status and legal relations under the aforementioned provisions of said written contracts will terminate the controversies presented between the plaintiff and said defendants herein.

22. The relief sought by the plaintiff and the defendants herein is provided for by C.R.S. §§77-11-1 *et seq.* (1963, as amended) and Colorado Rule of Civil Procedure 57. and all of the defendants herein are parties who have or claim any interests which will be affected by the within requested declaratory judgment.

23. This controversy was submitted to the court by stip-

ulation upon an agreed statement of facts as contemplated by Colorado Rule of Civil Procedure 57(d), supported by the required affidavits. The controversy thus presented is real and filed in good faith by all parties hereto to determine the rights of the said parties.

CONCLUSIONS OF LAW

1. A justiciable controversy exists between plaintiff and the defendant Western Electric concerning the enforcement and application of Article 24 of CWA-12, Article 23 of CWA-JC-12, Article 24 of CWA-13 and Article 23 of CWA-JC-13, and between plaintiff and defendant Mountain Bell concerning the enforcement and application of each of those clauses referred to above in contracts between CWA and Mountain Bell, in the State of Colorado in the absence of an "all-union referendum" conducted by the Industrial Commission of the State of Colorado pursuant to the Colorado Labor Peace Act, C.R.S. §§80-4-1 *et seq.* (1963, as amended).

2. Declaratory relief pursuant to C.R.S. §§77-11-1 *et seq.* (1963) and Colorado Rule of Civil Procedure 57 is appropriate and may be granted since all defendants herein are parties who have or may claim an interest herein which may be affected by the within relief.

3. This court has jurisdiction over the subject matter of this action and jurisdiction over the parties.

4. In 1935, Congress passed the National Labor Relations Act, 29 U.S.C. §151 *et seq.* (1964), and thereby undertook to regulate generally conduct by unions and employers in the field of labor management relations. Section 7 of that Act defined the rights of all employees to engage in or refrain from union activity,

> "except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

Section 8(3) provided that it was unfair labor practice for an employer to discriminate in any term, condition or tenure of employment because of union activity except,

> "that nothing in this Act . . . or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein . . . .

5. Section 8(3) did not result in congressional preemption of *any* state regulation of any union security clause or device, such as those in issue before this Court. According to the United States Supreme Court "Section 8(3) merely disclaim[ed] a national policy hostile to the closed shop or other forms of union-security agreement." *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 307 (1949), and allowed the states "to pursue their 'own more restrictive policies'," *id.* at 314,, over union security devises. That conclusion by the United States Supreme Court was drawn from the legislative history of the Wagner Act of 1935, prior to the Taft-Hartley amendments of 1947.

6. In 1947, Congress added the Taft-Hartley amendments to the National Labor Relations Act, which restricted severely the scope of permissible union security clauses penalizing employees for non-union membership by outlawing the closed shop entirely. Permissible employment discrimination under union security clauses was limited to "failure of the employee to tender the periodic dues and the initiation fees uni-

formly required as a condition of acquiring or maintaining membership [in the union]." 29 U.S.C. §158(a) (3) (b) (1964). Furthermore, by federal law, an employee had to be given thirty days prior to the time that his "membership" obligation under any union security clause could be enforced against him. The Taft-Hartley amendments also added Section 14(b), popularly known as the "right-to-work" provision, which specifically authorized state regulation of a union security:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which such execution or application is prohibited by state or territorial law." 29 U.S.C. §164(b) (1964)

The Supreme Court determined and this court is bound by the finding that Section 14(b) "was included [solely] to forestall the inference that federal policy was to exclusive. . ." in the matter of union security. *W.E.R.B. v. Algoma Plywood & Veneer Co., supra,* 336 U.S. at 314. Thus, it was added, not to add other union security devices to the list of those a state could regulate, but to emphasize what was intended originally in the Wagner Act of 1935 – that a state could regulate or prohibit any union security device it desired. Federal labor policy has remained unchanged in that area since 1935. As the *Algoma* court has concluded, even in the absence of Section 14(b), and as confirmed by its view of the legislative history of the Wagner Act neither §8(3) nor any other provision of the National Labor Relations Act resulted in congressional preemption of state regulation of union security clauses or devices, including the union shop, agency shop, modified union shop, modified agency shop, discriminatory hiring halls, maintenance of dues, maintenance of membership and the like, such as each of those clauses in issue before this Court. *Accord, Motorcoach Employees v. Lockridge,* 403 U.S. 274, 297 (1971).

7. *N.L.R.B. v. General Motors,* 373 U.S. 734 (1963) merely defined that under the Wagner Act and Taft-Hartley amendments, states could regulate any security device compelling any employee to pay money to a labor union and *Retail Clerks, Local 125 v. Schermerhorn* 375 U.S. 96 (1963), made clear that the individual state's power began with "execution and application" of an offending union security agreement. What state law reaches and prohibits or regulates within the outer perimeters set by federal law must be decided by state courts. *N.L.R.B. v. General Motors, supra.*

8. Neither the National Labor Relations Act, the Taft-Hartley amendments, nor any other federal legislation has operated to preempt the provisions of the Colorado Labor Peace Act regulating union security clauses as "all-union" agreements requiring an "all-union" referenrum as a prerequisite to their validity. Union security agreements requiring "membership" in a labor organization, regulation of which is preserved to the states explicitly by Section 14(b) of the Taft-Hartley Act and implicitly by the Wagner Act, are the same agreements conditioning "membership" on the payment of uniform dues and initiation fees described by Section 8(a) (3) of the National Labor Relations Act. *Retail Clerks v. Schermerhorn, supra.* The State of Colorado retains jurisdiction to prohibit or regulate all such union security clauses beginning with their "actual negotiation and execution." *Id.* The Colorado Supreme Court in *United Mine Workers v. Golden Cycle Corp.*, 134 Colo. 140, 300 P.2d 799 (1956), also concluded that resolution of the question of the union security

had always been left totally to the states, including the State of Colorado, and that the State of Colorado had chosen to regulate union security through the vehicle of the Colorado Labor Peace Act.

9. Using the Wagner Act as its example, Wisconsin enacted an Employment Peace Act in 1935, and Colorado's Labor Peace "was patterned on, and followed closely. . ." that act. *Denver Milk Producers v. Teamsters,* 116 Colo. 389, 183 P.2d 529,547 (1947). As *American Federation of Labor v. Reilly,* 113 Colo. 90, 155 P.2d 145 (1944) made clear, Wisconsin decisions under that act are highly persuasive and to be followed by Colorado Courts in construing the Labor Peace Act. The Colorado General Assembly presumably was aware of the extant federal legislative history and congressional viewpoint and preference when it followed Wisconsin's lead in 1943 and began to regulate union security by enacting the Colorado Labor Peace Act. Presumably and evidently, that General Assembly exercised its power over labor-management relations to the fullest possible extent and did *not* begin from the mistaken premises, either that the N.L.R.B. had exclusive jurisdiction over labor relations or that Congress had preempted the power of the State of Colorado to regulate and control union security. Since congressional labor policy sanctioning state control of all union security devices has never changed, nothing further can be inferred from the date of passage. This court cannot conclude that the Colorado legislature intended to restrict the purview of state influence to only the union shop nor condone the view that it intended to abandon the rights of workers in this state guaranteed in §80-4-4 of the Labor Peace Act just because §14(b) of the Taft-Hartley Act was not yet on the books, especially since there is no extant legislative history of the Labor Peace Act.

This court draws comfort from the fact that the U.S. Supreme Court reached the same conclusion in 1949 when it reviewed the Wisconsin statute under both the original Wagner Act and under §14(b) of the Taft-Hartley amendments. It concluded as had the Wisconsin Employment Relations Board and Wisconsin state courts that §14(b) changed nothing and that the states had always been free to regulate any form of union security under the Wagner Act. *W.E.R.B. v. Algoma Plywood & Veneer Co., supra.* That court considered the form of union security or the name the parties gave it irrelavant to determining the scope of state power, and since that date it has declined consistently to use the preemption doctrine to withdraw from consideration any specific devices compelling membership in a labor union. *E.g., Motorcoach Employees v. Lockridge,* 403 U.S. 274 (1971). Accordingly, this court chooses to follow the rationale of the foregoing decisions and holds that in conformity with the original Wagner Act, as clarified by §14(b), Colorado is free to regulate as an "all-union" agreement any union security clause contained an any collective bargaining agreement as long as the clause contains any mandate which compels an employee's financial support or allegiance to the labor organization regardless of name, including, but not limited to, the union shop, agency shop, modified union shop, modified agency shop, discriminatory hiring halls, maintenance of dues, maintenance of membership and the like. *Compare Radio Officers' Union, C.T.U. v. N.L.R.B.,* 347 U.S. 17 (1954), *with N.L.R.B. General Motors,* 373 U.S. 743 (1963). As in Wisconsin, the true reason is not the Colorado Labor Peace Act's fundamental purpose, declared in C.R.S. §80-4-4 (1963), is to protect the rights of *each* employee to engage in or refrain from activities in support of *any* labor organization unless and until three-quarters of the employees affected in a craft or establishment vote by a secret ballot to require membership in a labor organization as a con-

dition of employment in an all-union referendum. *See* C.R.S. 80-4-6 (1963). Those rights cannot be fully protected unless the Labor Peace Act is construed broadly in that manner.

10. The provisions of the Colorado Labor Peace Act, C.R.S. §80-4-1 *et seq.* (1963, as amended) apply to union security clauses in collective bargaining agreements negotiated by multi-state employers engaged in interstate commerce and doing business within the state of Colorado and to national labor organizations whenever the collective bargaining agreement in issue is applicable to a local union operating or headquartered within the State of Colorado. *Allen-Bradley Local No.* 1111 *v. W.E.R.B.*, 315 U.S. 740 (1942). The Colorado Supreme Court reached the same conclusion in *American Federation of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1945). To rule otherwise in this case would invalidate *sub silentio* the congressional intent implicit in the Wagner Act and Section 14(b) of the National Labor Relations Act and render impotent the power of the State of Colorado validly exercised in the Colorado Labor Peace Act to regulate union security and to preserve the rights of employees within the boundaries of the State of Colorado. No such conclusion was intended by the drafters of the Wagner Act, and therefore, this court concludes that the Colorado Labor Peace Act is applicable to collective bargaining agreements, including those in issue here, executed between employers and labor organizations subject to the National Labor Relations Act in all areas, including union security, reserved specifically to the states by the National Labor Relations Act.

To construe the Colorado Labor Peace Act generally in-any other manner would sanction a niggardly view inconsistent with the liberal construction of the Act mandated by the legislature in C.R.S. §135-1-212 (1973 Supp.) and incompatible

with full enforcement of the objectives the Act and the clear legislative purpose of preservation of worker rights as noted above. C.R.S. §135-1-203(1)(a), (g). Likewise, construing the Act very narrowly to exclude all but union shop clauses applicable to intrastate employers would render the Act essentially a nullity, an effect at variance with the legislative directive to this court to reach "a just and reasonable result". C.R.S. §135-1-201(c).

11. Since federal law defines nothing more than the outer-most perimeter of state regulation – that no one may discriminate in terms of employment by use of any union security device which requires an employee to do more than tender to the union those dues and initiation fees uniformly required of all other employees as a condition of obtaining employment, beginning thirty days after employment – this court now must look to the exact provisions of the Labor Peace Act, viewed liberally, C.R.S. §135-1-212, with an eye to fulfilling its lawful objects and legislatively declared purposes. C.R.S. §135-1-2-3(1)(a),(g). To properly complete that task requires this court not only to consider the plain meaning of the statute, C.R.S. §135-1-101, but also the true meaning of those "words and phrases that have acquired a technical or particular meaning . . . ." *Id.*

12. The Colorado Labor Peace Act's fundamental purpose is to protect the right of each employee to determine for himself whether or not to engage in labor matters or associate himself with a labor organization. The most crucial section of the law is C.R.S. §80-4-4 which guarantees those rights, declares them "essential" and adopts a policy of *strict construction* of all other provisions of the Act when possibly applied in derogation of those basic rights. It states:

"80-4-4. Rights of Employees. – In accordance with the provisions of this article, employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Such employees and each of them shall also have the right to refrain from any or all of such activities. Such rights of employees and each and all of them are essential rights and nothing hereinafter contained shall be so construed as to infringe upon or have any operation as against or in conflict with such rights and each and all of them."

The Act is replete with specific policy declarations by the legislature in favor of those rights as found in C.R.S. §80-4-4 and specific provisions designed to implement and protect them. Section 80-4-1 contains a declaration of policy for labor relations in Colorado and recognizes in subsection (2) thereof the interests of the public, the employee and the employer. It continues in subsection (3),

> "[t]hat whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, *they should not be permitted, in the conduct of their controversy, to intrude directly or indirectly into the primary rights of third parties to earn a livelihood. . . by any lawful means and free from molestation, interference, intimidation, restraint or coercion.*

Subsection (4) requires that the terms and conditions of work result from "voluntary agreement between employer and employee." That does not mean a union rather than an employee because the same subsection states that each employee "has

the right, if he desires, to associate with others [for collective bargaining purposes] without intimidation or coercion from any source." Subsection (5) recognizes the essential right of secret vote by the worker and that each employee "should have the right to *elect officers by secret ballot and to determine and vote* upon the question of striking or not striking or *other questions of policy* affecting the entire membership."

Section 80-4-2(7)(e) declares, in an unusual provision, that the discharge of an employee constitutes a labor dispute *"when such discharge or refusal to employ is founded upon membership in a union or labor organization. . . . "* Furthermore,C.R.S. §80-4-16(2) prohibits Colorado courts from issuing an injunction restraining a person from "ceasing. . . to perform any work or to remain in any relation of employment," or "becoming or remaining a member of any labor organization or of any employer organization. . ." C.R.S. §80-4-16(3). Section 80-4-17 likewise is crucial, for the legislature chose to *restate* and *reiterate* the policy declarations of C.R.S. §80-4-1, *supra*. That section points out that every undertaking or promise of any kind or type between an employee and an employer whereby he agrees to join or remain a member of either, *"are hereby declared to be contrary to public policy* and shall not afford any basis for the granting of legal or equitable relief of any court against a person or party to such undertaking or promise." Each of those rights is spelled out specifically in C.R.S. §80-4-17(b), (c) and (d).

Any violation of employee rights as delineated above is declared by C.R.S. §80-4-6(2)(b) to be an unfair labor practice. That provision clearly refers not only to the right to join or not to join a labor organization, but each individual employee's right to vote on all matters affecting his membership in a labor organization.

Colorado has chosen the strongest possible language to protect the individual employee's rights, and this Court must, by legislative mandate, consider this controversy against that policy backdrop. Adding and categorizing each such right individually and repetitively and prohibiting *specifically* not only employer and union, but also any public action, designed to infringe upon those "essential rights" of C.R.S. §80-4-4 establishes that every employee in Colorado has at least the same rights as do employees in "right-to-work" states to engage in or refrain from union activity, and each employee must be accorded the same basic opportunity to determine the type of organization, if any, he wishes to join. Thus, while a bargaining agent may be certified as "exclusive" under federal law, that does not mean an employee loses his freedom to join that union, another union or no union. That right is guaranteed each worker, not just some, and not just those who have worked for one employer a long time. The fact that those statutory provisions are even somewhat redundant demonstrates the extreme concern of the Colorado General Assembly to ensure that each employee is given every option and complete freedom of choice in labor matters.

13. Colorado does provide one exception. If three-quarters of all the employees in a bargaining unit want a union security clause that requires them and others to become or remain members of one that specific union, or pay a sum equivalent in dues to that specific union, such a clause may be legalized by an affirmative vote of three-quarters of their number and formalized between the union and employer in an "all-union agreement."

An all-union agreement is defined as

an agreement between an employer and a collective bar-

gaining unit representing *some or all of his employees*, whereby all of the employees of an employer in a craft or an establishment are required to be members of a single labor organization. C.R.S. §80-4-2(8) (1963).

Unquestionably, that language is somewhat ambiguous. By plain meaning the union need only represent "some" employees and, perforce, those employees are free to join another union until the existing union wins an "all-union" referendum. What employees must then become members of that union are those in the same "craft" or "establishment." A craft is composed of people who use similar skill and training to perform work of a similar character. *See Switchmen's Union of North America v. National Mediation Bd.*, 135 F.2d 785,793 (D.C. Cir. 1943). An establishment is any thing or entity which has become permanently founded. *See Webster's New World Dictionary*, p. 497 (1957 ed.) The latter, thus, is broader than merely a collective bargaining unit and includes not only the plant or factory, but also any certified, existing union to which employers may belong. Considering those meanings in light of legislative policy and existing federal law leads irresistably to the conclusion that each clause in issue is an "all-union" agreement because it compels employees of defendants to be members, i.e., pay dues, to one single labor organization and none other than plaintiff.

14. An "all-union" agreement may be executed between an employer and a union that represents only some of its employees. If the union represents only some of its employees, another union may represent other employees, and there may be two or more N.L.R.B. certified bargaining representatives for different groups of employees. Section 80-4-5(1), which deals with bargaining representatives and elections, states:

> A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, provided the majority of the employees of one employer, or the majority of the employees of one employer *in a craft,* vote at such election. . . .

Thus, our legislature has said that the collective bargaining representative need represent only a small segment of all the "employees." Also, in that provision it carefully excluded the word "establishment." Since there may be more than one union, each of which represents only a portion of the employees of an employer, and different recognizable groups of employees, it follows from that and from the definition of the word "establishment" that an all-union agreement covers not only certain segments of the employer's plant, but also any recognizable "craft" group of employees and the local unit of the labor organization.

Thus, an "all-union" agreement is any union security clause negotiated and executed between an employer and a local union which requires "all" the employees of that employer who are "members" of that local union, or included in a recognized and defined employee group, to become and remain members of that one certified union, rather than any other, and to maintain their membership in that union by contributing financial support in the form of dues payments. The Colorado Labor Peace Act covers every kind of union security device, as long as some employees are required to continue their "membership" and financial support of that labor organization regardless of their wishes. That conclusion also is mandated by C.R.S. §80-4-4, which guarantees every single Colorado employee freedom of choice and accords each worker's rights a status paramount to the interests of either labor, management, or the public. For this court to hold otherwise would be to

sanction perversion of legislative policy by allowing most workers' rights to be disregarded any time any one employee was excluded from any union security clause. That would be precisely what this court would have to do here. This court believes the Colorado legislature fully intended to guarantee all workers the right to join *and later quit* any labor organization until those workers themselves by secret ballot take that right away, and it will not subvert that right. That is the only reasonable and liberal construction possible which effectuates the Act's policy in C.R.S. §80-4-4 of guaranteeing freedom of choice. That conclusion also is consistent with the United States Supreme Court's affirmance of the Wisconsin Supreme Court's determination that a maintenance of membership clause applicable only to existing employees violated Wisconsin law when its statutory language was the same as Colorado's and in the absence of an "all-union" referendum. *W.E.R.B. v. Algoma Plywood & Veneer Co., supra.*

Furthermore, neither in Wisconsin nor in Colorado does the "all-union" agreement proviso change the philosophy of the act to guarantee employees' freedom of choice; rather it provides an additional manifestation of the right of free choice, for if employees desire a union security clause, their rights to engage in or refrain from union activity dictate that they should also have that right. The sole additional mandate set by the legislature arises because of its preference, expressed again and again, in favor of each employee's freedom from coercion of any kind, and its statement in C.R.S. §80-4-4 that employee rights are "essential." Approval of any union security device in derogation of those rights must be strictly construed and carefully scrutinized to ensure that it complies with the statute. *Id.* Otherwise, the mandate of employee freedom expressed in the Colorado Labor Peace Act would be frustrated.

15. A negotiated "all-union" agreement is invalid in the absence of the referendum specified in C.R.S. §80-4-6(1)(d), which declares it to be an unfair labor practice for an employer:

> . . . to encourage or discourage membership in any labor organization . . . by discrimination in regard to hiring [or] tenure . . .' except that an employer shall not be prohibited from entering into an all-union agreement with representatives of his employees, *in the collective bargaining unit, where three-quarters or more of his employees shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the Director.*

Without that secret vote of affected employees, which is also declared essential by C.R.S. §80-4-1, it is an unfair labor practice to encourage or discourage membership in any labor organization, C.R.S. §80-4-6(1)(c), and is specifically declared to be contrary to the public policy of Colorado by C.R.S. §80-4-17. Thus, until an election is held and such an "all-union" agreement is approved by three-quarters of the employees voting, *all* union security provisions of any kind, including the union shop, agency shop, maintenance of dues or membership, are illegal and void in Colorado and in contravention of the carefully protected rights of employees to chart their own course in labor matters in negotiations with their employer.

16. In the absence of an "all-union" referendum the Colorado Labor Peace Act prohibits entirely all union security devices and constitutes the legal equivalent of a right-to-work law, which also protects employees' right to engage in or refrain from collective activity. Judicial precedent from "right-to-work" states establishes that all union security devices in-

cluding union shop, agency shop, modified union shop, modified agency shop, discriminatory hiring hall, maintenance of dues, and maintenance of membership are illegal and prohibited in all circumstances if they compel in any manner an employee's financial support or allegiance to a labor organization. *Compare Local Union No. 438 v. Curry*, 371 U.S. 542 (1963); *and Higgins v. Cardinal Mfg. Co.*, 188 Kan. 11, 360 P.2d 456, *cert. denied*, 368 U.S. 829 (1961); *with Amalgamated Association of Street, Electric, Railway & Motorcoach Employees v. Las Vegas - Tonopah - Reno Stagecoach Line, Inc.*, 202 F. Sup. 726 (D. Nev. 1962), *aff'd*, 319 F.2d 783 (9th Cir.. 1963) and *Retail Clerks International Association v. Schermerhorn* 373 U.S. 746 (1963). In Colorado, however, union security is prohibited *until* the "all-union" referendum is had and won by the union; then and only then may an employee's "right-to-work" be controlled by union security clauses. Colorado thus has a modified right-to-work act and in the absence of the all-union referendum, precedent from right-to-work states is equally compelling here.

17. Although the Colorado Supreme Court has not squarely defined the reach of "all-union" agreements, its enunciation of policy underlying the Labor Peace Act support this court's view. It has emphasized and approved the legislature's declared public policy of protecting employer/employee rights and has declared illegal any and all union security agreements in the absence of the "all-union" referendum. In *Bowers v. Teamsters, No. 17, Civil Action No. B-7920,* (Dist. Ct. February 17, 1956) (McWilliams) the court was called upon to consider the validity of union picketing designed to induce an employer to sign an "all-union contract", requiring employees to become union members within thirty days or lose their jobs. The sole question before the court was whether the union by its acts and conduct had violated the Colorado Labor Peace

Act. Emphasizing the public policy embodied in C.R.S. §§80-4-1, -4-17, *supra*, the court stated that the union was attempting to do indirectly what it could not do directly by trying to require the employer to sign a contract containing the questioned clause before the employees had voted in a representational election for the union. The court found that the rights of the employees to join or refrain from joining a union had been ignored. The Court emphasized that the union had a viable, lawful manner in which to obtain the right to represent those employees by following the relevant provisions of the Colorado Labor Peace Act, and that attempting to obtain that "coercive right" by any other means was *prohibited* by the Labor Peace Act in Colorado. Its determination was based upon what is now C.R.S. §80-4-4, which protects and guarantees certain rights to employees, and §80-4-6(c)(e) which declares improper an all-union agreement unless the statutory election is had. In conclusion, the court found the picketing unlawful and issued an injunction.

In so ruling, the *Bowers* court relied upon *Meat Cutters v. Green*, 119 Colo. 92, 200 P.2d 924 (1948), in which the union had lost a representational election and then threatened to close the employer's business operation unless he entered into a contract requiring all his employees to become union members. Although the decision turned on whether there was "a labor dispute" involved, the Supreme Court indicated that had the employer consented to the union security clause demanded by the union, *the result would have meant that those of his employees who had expressly indicated their desire not to have union representation would have been forced to join the union or be discharged*. In crucial language, the court stated:

If, under the conditions here, Green had signed the contract, which the secretary and business agent of the union was insisting should be executed by him, he would have been guilty of a violation of section 6(1)(a), and Section 6(1)(c), and Section 6(1)(3), of the Labor Peace Act, and his action would have constituted an unfair "labor practice," for which he would have been amenable in civil and criminal actions. 119 Colo. at 105-06.

For Green to have entered into the agreement proposed without a referendum would have violated the Colorado Labor Peace Act because he would have prevented his employees from exercising their right of free choice to join a labor organization and committed an unfair labor practice. That case expressly recognizes that an "all-union" referendum, won by the union is a condition precedent to execution or enforcement of any union security agreement. Without it, any union security device is illegal and the employer, the employee, and the union are subject to criminal as well as civil sanctions. *Accord, Denver Milk Producers Inc. v. International Brotherhood of Teamsters Union*, 116 Colo. 398, 183 P.2d 529, 547 (1947); *see also, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers v. Publix Cab Co.*, 119 Colo. 208, 202 P.2d 154 (1949). Most crucial to this court is the emphasis on employee rights.

Perhaps the case most clearly in point in Colorado is *Barbers Union v. Industrial Commission*, 128 Colo. 121, 260 P.2d 941 (1953), in which the union tendered a contract which would require an employer and his employees to become members of the union so that he could continue to display a union shop barber card in his window. No referendum was conducted. Since there had been none, the court concluded that the union did not have the right to require the employer to agree to such a clause, even though it accorded him a special "limited

membership," and held that the union's action was opposed to the public policy of the state of Colorado as declared by the legislature in the Labor Peace Act. Again, our Supreme Court relied upon the declaration of employee rights and public policy as enunciated in C.R.S. §80-4-1. Also, it characterized the union demand as an unfair labor practice under C.R.S. §80-4-6(1)(b), (d), (f), because no referendum and concomitant affirmative approval by three-quarters of the employees appeared of record. What the court considered most crucial was that the union proposed to require something which had been declared prohibited and in violation of legislative intent, as recognized by Colorado courts relying upon Wisconsin precedent. The court also emphasized that the union was attempting to eliminate the employer's right to vote and compel him to become a member of a labor organization without exercise of that right, *stating that the right to vote was an essential element of a man's ability to join or not to join a labor organization or become a full member thereof:*

> In the consideration of statutes, courts are not guardians of the rights of the people except as those rights are secured by constitutional provision, and if a statute does not offend the Constitution, it is the duty of courts to carry it into execution according to its true intent and purpose. 'It cannot pass upon its expediency or policy; those are questions upon which the legislature has passed, and its judgment cannot be reviewed by the courts.' 128 Colo. at 134.

See also United Mine Workers v. Golden Cycle Corp. 134 Colo. 140, 300 P.2d 799 (1956), in which the court characterized the union's efforts to obtain an all-union contract without a proper election as illegal. The provisions of the Colorado Labor Peace Act specifically were declared constitutional in *American Federation of Labor v. Reilly,* 113 Colo. 80, 155 P.2d 145 (1944).

The last case worthy of note is *Pueblo Building & Construction Trades Council v. Harper Construction Co.,* 134 Colo. 469, 307 P.2d 468 (1957), in which the trial court's grant of an injunction against a labor union was reversed. There appeared to be only one picket in this case, and there was no indication that the union was attempting to require the execution of a labor contract containing a union security clause without first conducting a referendum. In fact, the court distinguished its prior actions in the *Denver Milk Producers* and *Green* cases, *supra,* by noting that, "in each of these cases the court determined that the union was picketing for an unlawful objective [i.e. the execution of a union security clause without the necessary referendum under state law]." 134 Colo. at 479. In that language, the court again indicates the need for an "all union" referendum as a prerequisite to the validity of a union security clause.

The import of the foregoing cases is clear to this court. The Colorado Labor Peace Act protects fundamentally each worker's free choice to join, refrain from joining, or quit a labor organization. Any contract clause which interferes with that right must be "strictly construed" as in derogation of those rights. C.R.S. §80-4-4. Thus, while the precise holdings of those cases are not important, the objective and policy of the Colorado legislature as clarified therein is, and must guide the resolution by this court of the present controversy.

18. *Building Construction Trades Council, A.F.L. v. American Builders, Inc.,* 139 Colo. 236, 337 P.2d 953 (1959), does not compel a different conclusion or approach. In that case – decided prior to either of the *Schermerhorn* decisions the *General Motors* decision and *Local No. 438 v. Curry,* 371 U.S. 542 (1963) – the Colorado Supreme Court reversed a district court decision granting an employer an injunction

against a union to restrain its members from peaceful picketing in an effort to compel non-union employees to join the union, contrary to provisions of the Colorado Labor Peace Act dealing with "all-union" agreements. The decision recognized that §14(b) sanctions state "right-to-work" laws but does not apply to such picketing situations. The specific basis of decision was that the conduct complained of arguably was an unfair labor practice under the N.L.R.B. and so Colorado courts were without jurisdiction to proceed in the absence of a cession of jurisdiction by the Board, and has no powers of enforcement. *Contra, Retail Clerks v. Schermerhorn, supra,* 375 U.S. 96 (1963), holding that state power over union security agreement begins with their "execution and application." In *dictum,* Stating Colorado had no "right-to-work" law, the Colorado Supreme Court erroneously assumed that the same principle restricting state power over peaceful picketing would govern cases in which a state sought to regulate union security devices permissible under federal law, a power preserved to the states since the 1935 Wagner Act, and confirmed by §14 (b).

What the court failed to recognize was that enjoining peaceful picketing and regulating union security are subject to divergent treatment under federal law. Preemption applies in the former: but because of the congressional philosophy of the Wagner Act and statutory codification in §14(b), it does *not* in the latter circumstance. Preemption applies to *union* rights, but not to *employee* rights. In the sense that the court recognizes the vitality of §14(b), at least in *per se* right-to-work states, it was correct; but it is patently *wrong* in the statement that §14(b) applies only when a union security agreement cannot be executed or applied in any circumstances. Ten years earlier, *Algoma Plywood & Veneer Co. v. W.E.R.B.*, ruled that under §14(b), states could *prohibit* as well as *regulate* the application of union security agreements and that no federal pre-

emption was involved in those circumstances. *See also, N.L.R.B. v. General Motors and Retail Clerks v. Schermerhorn, supra.* That oversight may be excused because it was not until the second *Schermerhorn* decision, 375 U.S. 96 (1963), that the United States Supreme Court defined specifically the limits of state action: §14(b) empowers the states to act after the execution and application of the union security agreement, i.e., after the union writes it and attempts to enforce it. If the union pickets before to obtain such a clause, its rights are protected under federal law. It has no concomitant "right" in Colorado to coerce workers' choice. Consequently, this court declines to use that case as the basis of a binding interpretation of the Labor Peace Act.

19. Also inapplicable to the present controversy are cases considering clauses which do not embody the "practical equivalent of compulsory unionism" and which are not involved in the present controversy, such as check-off authorizations, in which state law is preempted by §302 of the Landrum-Griffin Act of 1959 and nondiscriminatory hiring halls. *E.g., N.L.R.B. v. Houston Chapter, Associated General Contractors,* 349 F.2d 449 (5th Cir. 1965), *cert. denied,* 382 U.S. 1026 (1966); *Sea-Pak v. Professional Employees,* 300 F. Supp. 1197 (S.D. Ga. 1969), *aff'd.*, 423 F.2d 1229 (5th Cir. 1970), *aff'd.*, 400 U.S. 985 (1971). The clauses before the court all involve "the practical equivalent of compulsory unionism –" the payment of money to a labor organization, and, hence, they are legally and factually distinguishable.

20. Colorado regulates all union security devices requiring "membership" in a labor organization as that term is defined by Section 8(a)(3) of the National Labor Relations Act, including but not limited to the union shop, the agency shop, maintenance of membership, maintenance of dues and modi-

fied agency shop provisions. Article 24 of Contract CWA-12; Article 23 of Contract CWA-JC-12; Article 24 of Contract CWA-13; Article 23 of Contract CWA-JC-13 and all Mountain Bell clauses noted above are union security clauses subjected to state regulation by the Wagner Act and §14(b) and "all-union" agreements within the meaning of the Colorado Labor Peace Act because they require that existing union members, all transfers into the bargaining unit, and all newly hired employees make periodic dues payments to one union — the Plaintiff. That is an "establishment" within the meaning of C.R.S. §80-4-2(8). Furthermore, except for an insubstantial and no longer applicable ten day escape clause, (which never existed in fact for 1971 contracts), each absolutely prevents all covered employees from withdrawing from the union and *compels* them to pay dues for up to two years from the time they enter the bargaining unit regardless of their wishes or desires. No one can now withdraw from the union whether he wants to or not. That is contrary to Colorado law. In the absence of such an "all-union" 'agreement, employees in Colorado, as noted above, are guaranteed the right to determine whether to support a labor organization at all times by C.R.S. §80-4-4, and that includes the freedom to withdraw from union activity at any time. All those affected employees would lose their rights guaranteed by C.R.S. §80-4-4 if Plaintiff's argument were to prevail. Those bargaining unit members who utilized their statutory rights under C.R.S. §80-4-4 to resign from plaintiff would now be required to join plaintiff and remain members or lose their jobs if they did not and the court decreed enforcement of the contract clauses in issue. A more blatant disregard of legislative direction and employee rights, the court cannot imagine! The simple fact is that there is no way now — and was none after July, 1971 — for these employees to leave the union and keep their jobs under the clauses in issue. That the union has attempted to apply that sanction under these same

clauses is stipulated. To conclude that such a clause does not destroy employee freedom of choice and hence is not an "all-union" agreement is to ignore reality and the policy dictates of the legislature. Consequently, the Court concludes that each union security clause before the court is an invalid "all-union" agreement because no "all-union" referendum has been conducted pursuant to C.R.S. §80-4-6(d).

21. Since Article 24 of CWA-12, Article 23 of CWA-JC-12, Article 24 of CWA-13, and Article 23 of CWA-JC-13 and the Mountain Bell clauses are illegal, invalid and prohibited by Colorado law, plaintiff may not rely upon the same to effect the discharge of any employee refusing to comply with the terms thereof, and for defendants Western Electric and Mountain Bell to enforce said contract clauses at the behest of plaintiff to terminate the affected employees would constitute unlawful discrimination in regard to the terms or conditions of said employees' employment and an unfair labor practice within the meaning of C.R.S. §80-4-6(1)(d) of Colorado Labor Peace Act, as in contravention of essential employee rights of freedom of choice whether to join or support any labor organization. No employees of defendants Western Electric and Mountain Bell validly may be discharged pursuant to any of said contract provisions and said defendants lawfully refused the demand for discharge. For defendants to have enforced the clauses in issue against any employees failing to comply with their terms under present facts would have subjected them to additional civil and criminal penalties specified in the Colorado Labor Peace Act.

JUDGMENT

On the basis of the foregoing findings of fact and conclusions of law the Court declares and orders as follows:

(1) All contract clauses in issue and referred to above are declared to be illegal, invalid and unenforceable "all-union" agreements since no validating "all-union" referendum has been conducted by the Industrial Commission of the State of Colorado and approved by a three-quarter vote of the affected membership of plaintiff; and

(2) No employee of defendants Mountain Bell and Western Electric may be discriminated against by any party to the aforesaid collective bargaining contracts in controversy before this court in regard to any term, condition, or tenure of his or her employment for failing to comply with any of said union security clauses.

Dated at Denver, Colorado, this 9th day of September, 1974.

BY THE COURT:

s/James C. Flanigan
Denver District Judge

APPENDIX B

PROCEEDINGS BEFORE COLORADO SUPREME COURT

1. Opinion of Colorado Supreme Court.

NO. 26651
and
NO. 26797

COMMUNICATIONS WORKERS OF AMERICA, an unincorporated labor association,

Plaintiff-Appellant,

v.

WESTERN ELECTRIC COMPANY, INCORPOATED, a New York corporation, STATE OF COLORADO, DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF LABOR, JAMES M. SHAFFER, Executive Director, State of Colorado, Department of Labor and Employment, Division of Labor, INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, HENRY C. KIMBROUGH, in his capacity as a member of the Industrial Commission of the State of Colorado, ALBERT F. MANGAN, in his capacity as a member of the Industrial Commission of the State of Colorado, and KENNETH G. RUSSELLL, in his capacity as a member of the Industrial Commission of Colorado, and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, a Colorado corporation,

Defendants-Appellees

Appeal From the District Court of the City
and County of Denver
Honorable James C. Flanigan, Judge

EN BANC JUDGMENT AFFIRMED

John W. McKendree,
Clay Smith,
Charles V. Koons, Of Counsel,
Attorneys for Plaintiff-Appellant.

Rovira, DeMuth & Eiberger,
Carl F. Eiberger,
Russell P. Rowe,
Jeffrey G. Pearson,
Attorneys for Defendant-Appellee Western Electric Company, Incorporated.

David R. Hansen,
Lawrence M. Joseph,
Robert Levitt,
Attorneys for Defendant-Appellee The Mountain States Telephone and Telegraph Company.

J. D. MacFarlane, Attorney General,
Jean E. Dubofsky, Deputy Attorney General,
Edward G. Donovan, Solicitor General,
Peter L. Dye, Assistant Attorney General,
Attorneys for Defendants-Appellees State Agencies and Officials.

Gorsuch, Kirgis, Campbell, Walker and Grover,
David R. Gorsuch,
Rex H. Reed,
Attorneys for Amicus Curiae, National Right to Work Legal Defense Foundation, Inc.

Criswell & Patterson,
John A. Criswell,
Attorneys for Amicus Curiae, Colorado-Wyoming Joint Council of Teamsters No. 54.

Walter C. Brauer III,
Mark N. Simons,
Attorneys for Amicus Curiae, Colorado Labor Council.

MR. JUSTICE ERICKSON delivered the Opinion of the Court.

This is an appeal by the plaintiff, Communications Workers of America (an unincorporated labor association, hereinafter referred to as C.W.A.) from an adverse decision of the District Court for the City and County of Denver. The defendants are the Western Electric Company, Inc., a New York corporation; the State of Colorado, Department of Labor and Employment, Division of Labor; James M. Shaffer, Executive Director of the Division of Labor; the Industrial Commission of the State of Colorado; Henry C. Kimbrough, Albert F. Mangan, and Kenneth C. Russell, members of the Industrial Commission; and the Mountain States Telephone & Telegraph Co., a Colorado corporation.

This appeal followed a determination by the district court of a consolidated action which was submitted as an agreed case and on stipulated records and evidence pursuant to C.R.C.P. 7(d). No significant issues of fact are in controversy. The relief prayed for was a declaration of the rights, status, and legal relations of the Communications Workers of America under certain union security provisions contained in collective bargaining agreements with the defendants Mountain States Telephone & Telegraph Co., and the Western Electric Co., Incorporated. The petitioner sought a declaration that the union

security provisions were valid and enforceable in the absence of an "all-union" referendum conducted by the director of the Division of Labor.

The district court determined that declaratory relief, pursuant to C.R.S. 1963, 77-11-1,[1] *et seq*, was appropriate and concluded that the contested provisions of the various collective bargaining agreements were illegal, invalid, and unenforceable. *See also* C.R.C.P. 57. We affirm.

The international headquarters of the plaintiff, C.W.A., is located in Washington, D.C., and its principal place of business in Colorado is in Denver. Under certain collective bargaining agreements entered into in 1968 and 1971, C.W.A. became lawfully entitled to represent, as the exclusive bargaining agent, certain employees in the industrial field forces of the Service Division of Western Electric Company, Incorporated, in several states of the United States, including Colorado. C.W.A. is also, pursuant to other collective bargaining agreements, lawfully entitled to represent, as the exclusive bargaining agent, certain employees in the Plant and Traffic Departments of The Mountain States Telephone and Telegraph Company (hereinafter Mountain States).

In this appeal, seven collective bargaining agreements, with attendant union security clauses, are at issue. Three of these were entered into between C.W.A. and Mountain States and four were entered into between C.W.A. and Western Electic. The details of the contested union security clauses of the several collective bargaining agreemnts will be set forth in the text of this opinion.

On May 9, 1968, a collective bargaining agreement was entered into between C.W.A. and defendants, Mountain States

[1]Now section 13-51-105, C.R.S. 1973.

and the Division of Labor, covering certain employees in the Plant Department of Mountain States. This agreement reads, in pertinent part:

> "2.1 The Company and the Union agree that they will not interfere with the rights of employees to join or refrain from joining the Union and agree that they will not in any manner, because of an employee's membership or nonmembership therein directly or indirectly discriminate against, interfere with, coerce, restrain, discharge, demote, transfer, or discipline any employee.
>
> . . . .
>
> "14.1 Each employee who is a member of the Union on or after the 30th calendar day following the beginning of his employment, or on or after the effective date of this Agreement, whichever is the later, shall as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the termination of this Agreement, except that each such employee may, within the 10-day period immediately preceding May 9, 1971, upon which date the Agreement terminates, terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company in writing of his withdrawal from membership in the Union.
>
> "14.2 Said condition of employment shall reapply to any such employee after his return to the bargaining unit following any transfer out of the bargaining unit, any removal from the payroll of the Company, or any leave of absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

"14.3 The provisions of this Article shall not apply to any employee in any state in which the application of such provision would be inconsistent with the law of such State.

"14.4 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article."

On the same date, another collective bargaining agreement was entered into between C.W.A. and Mountain States and the Division of Labor covering certain employees in the Traffic Department of Mountain States, which provides:

"1.1 The Company, its officers and supervisors, shall not interfere with the rights of employees to become and remain members of the Union and shall not in any manner, directly or indirectly, discriminate against, interfere with, coerce, restrain, discharge, demote, transfer or discipline any employee by reason of his or her membership or non-membership in the Union.

. . . .

"Article 15

"Section 1: Maintenance of Dues

"1.1 Each employee who is a member of the Union on or after the 30th calendar day following the beginning of her emplyoment, or on or after the effective date of this Agreement, whichever is the later, shall as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the termination of this

Agreement, except that each such employee may, within the 10 day period, immediately preceding May 9, 1971, upon which date the Agreement terminates, terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company in writing of her withdrawal from membership in the Union.

"1.2 Said condition of employment shall reapply to any such employee after her return to the bargaining unit following transfer out of the bargaining unit, any removal from the payroll of the Company, or any Leave of Absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following her return to the bargaining unit.

"1.3 The provisions of this Article shall not apply to any employee in any State in which the application of such provision would be inconsistent with the law of such State.

"1.4 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article."

During the term of the first two Mountain States collective bargaining agreements, numerous Colorado employees of Mountain States within the bargaining units covered by the foregoing agreements were members of C.W.A. Their membership was in effect on or after the thirtieth calendar day following the beginning of their employment or on or after the effective date of the agreement. Thereafter, several employees ceased paying or tendering to C.W.A. an amount equal to their periodic union dues. The payments were not ceased within

the ten-day period immediately preceding the termination date of the applicable collective bargaining agreement, the "escape" period under the contracts.

On or about June 3, 1970, and again on or about September 3, 1970, C.W.A. demanded that Mountain States dismiss the employees who had ceased paying or tendering to the union an amount equal to their periodic union dues. C.W.A. alleged that the employees were in violation of the contract provisions set out above. Mountain States refused to dismiss the employees contending that the above-cited provisions were not binding because of the provisions of the Colorado Labor Peace Act, C.R.S. 1963, 80-4-1,[2] *et seq* (as amended).

Another collective bargaining agreement was entered into between C.W.A. and Mountain States and the Division of Labor on or about the 18th of July, 1971. This agreement covered certain employees of the Plant and Traffic Department of Mountain States, and set forth:

> "2.1 The Company and the Union agree that they will not interfere with the rights of employees to join or refrain from joining the Union and agree that they will not in any manner, because of an employee's membership or nonmembership therein directly or indirectly discriminate against, interfere with, coerce, restrain, discharge, demote, transfer, or discipline any employee.
>
> . . . .
>
> "Article 21
>
> Modified Agency Shop
>
> "21.1 Each regular employee who is a member of the Union on the date of ratification or approval of this

[2]Now section 8-3-101, C.R.S. 1973.

> agreement by the President of the Union, whichever is later, or who later becomes a member of the Union and all regular employees hired on or after that date shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval or the date of later becoming a member or, in the case of regular employees hired on or after such date of ratification or approval, 30 days after hire, whichever of these dates is later until the termination of this contract, except that an employee may terminate this condition of employment by giving written notice to the Company and the Union of such termination, and, if applicable, his withdrawal from membership in the Union by registered mail, return receipt requested, and postmarked within the ten-day calendar period immediately preceding 11:59 P.M., July 28, 1971.
>
> "21.2 Said condition of employment shall reapply to any such employee after returning to the bargaining unit following any transfer out of the bargaining unit, any removal from the payroll of the Company, or any leave of absence of more than one month's duration, provided such employee is a member of the Union on or after the 30th day following return to the bargaining unit.
>
> "21.3 The provisions of this Article shall not apply to any employee in any state in which the application of such provision would be inconsistent with the law of such State.
>
> "21.4 The Company may inform employees and applicants for employment of their rights and obligations under the provisions of this Article."

Defendant Western Electric Company Incorporated entered into a collective bargaining agreement with C.W.A. on May 1, 1968, covering certain communications equipment workers in the installation field forces of the Service Division of Western Electric. This contract was denominated as Contract C.W.A.-12 and provides:

"ARTICLE 24

Maintenance of Union Dues

1. Each Employee who is a member of the Union:

(a) on or after the 30th calendar day following the beginning of his employment, or

(b)on or after the effect date of this contract

whichever is the latest, shall, as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the final termination of this contract, except that each such Employee may, within the ten (10) day period immediately preceding the termination date of this contract, terminate his obligations to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company of his withdrawal from membership in the Union.

"1.1 Said condition of employment shall reapply to any such Employee after his return to the bargaining unit following any period of formal separation* therefrom, provided such Employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

*Includes:
Transfers out of the bargaining unit.
Removal from the payroll of the Company.
Leaves of Absence of more than one (1) month duration.

"2. The provision of this Article 24 shall not be effective if inconsistent with the law of the applicable State.

"3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this Article 24.

Because job clerks are also employed in the installation field forces of the Service Division of Western Electric, a separate collective bargaining agreement was entered into with C.W.A. on May 1, 1968, covering these employees, and denominated as Contract C.W.A.-JC-12, Article 23 of Contract C.W.A.-JC-12, states:

"ARTICLE 23

Maintenance of Union Dues

"1. Each Employee who is a member of the Union:

(a) on or after the 30th calendar day following the beginning of his employment, or
(b) on or after the effective date of this contract,

whichever is the latest, shall, as a condition of employment pay or tender to the Union an amount equal to the periodic Union dues until the final termination of this contract, except that each such Employee may, within the

10 day period immediately preceding the termination date of this contract terminate his obligation to tender periodic Union dues to the Union as a condition of employment by notifying both the Union and the Company of his withdrawal from membership in the Union.

"1.1 Said condition of employment shall reapply to any such Employee after his return to the bargaining unit following any period of formal separation* therefrom, provided such Employee is a member of the Union on or after the 30th day following his return to the bargaining unit.

*Includes:
Transfers out of the bargaining unit.
Removal from the payroll of the Company.
Leaves of Absence of more than one (1) month duration.

"2. The provisions of this Article 23 shall not be effective if inconsistent with the laws of the applicable State.

"3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this Article 23."

During the term of these two collective bargaining agreements with C.W.A. numerous Colorado employees of Western Electric in the appropriate bargaining unit covered by the agreements were members of C.W.A. either on or after the thirtieth calendar day following the beginning of their employment or on or after the effective date of the applicable agreement. These employees ceased paying or tendering to the union an amount equal to their periodic union dues, and in

each case, cessation did not occur within the "escape" period under the agreements.

On June 5, 1970, C.W.A. demanded of Western Electric that it take action under the two 1968 collective bargaining agreements and terminate Western Electric's employees. Western Electric replied that before an employer may enter into an agreement providing for union security in Colorado, the Industrial Commission of Colorado must certify that three-quarters or more of the bargaining unit employees shall have voted affirmatively in a referendum in favor of such an agreement. A letter went on to describe Western Electric's position:

". . . since no such referendum has been conducted among the bargaining unit employees based in Colorado, it would violate Colorado law to condition the employment of these employees upon the payment of union dues. Accordingly, we must deny your request that the Company terminate the above-named employees because of their alleged failure to pay dues to the Union because the contract articles have no effect in light of the provisions of the Colorado Labor Peace Act, C.R.S. 80-4-1 (1963), et seq., as amended."

Contract C.W.A.-13 was entered into between Western Electric and C.W.A. in July, 1971, covering certain communication equipment workers of the installation field forces of the Service Division of the company. Article 24 of C.W.A.-13 provides, in pertinent part:

"ARTICLE 24

Union Security

"1. Each Employee who is a member of the Union

on the date of ratification or approval of this Contract by the President of the Communications Workers of America, whichever is later, or who later becomes a member of the Union and all Employees hired on or after such date shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval of the date of later becoming a member or, in the case of Employees hired on or after such date of ratification or approval, thirty (30) days after hire, whichever of these dates is later until the termination of this Contract, except that an Employee may terminate this condition of employment by giving written notice to the Company and the Union of such termination, and, if applicable, his or her withdrawal from membership in the Union, by registered mail, return receipt requested, and postmarked with the ten (10) day calendar period immediately preceding 11:59 P.M. July 27, 1971.

"2. The condition of employment specified in Paragraph 1 shall not apply during the period of formal separation* from the bargaining unit by any such Employee but shall reapply to such Employee on the thirtieth (30th) day following his or her return to the bargaining unit.

*The term 'formal separation' includes transfers out of the bargaining unit, removal from the payroll of the Company, and Leaves of Absence of more than one (1) month duration.

"3. The Company may inform Employees and applicants for employment of their rights and obligations under the provisions of this article.

"4. This article shall apply only in those States and

the District of Columbia where the law permits the Union to enter into this type of union security agreement. If during the term of this Contract the Union shall become duly authorized under the laws of any other State to enter into this type of union security agreement, the effective date of this article as to Employees in such State shall be the date upon which the Company receives proper written evidence from the Union that it is fully qualified to enter into such an agreement in such State.

Another collective bargaining agreement was entered at the same time as C.W.A.-13, covering job clerks employed in the installation field forces of the Service Division of Western Electric. This agreement was denominated as C.W.A.-JC-13. Article 23 of that agreement is relevant and provides:

"ARTICLE 23

Union Security

"1. Each Employee who is a member of the Union on the date of ratification or approval of this Contract by the President of the Communications Workers of America, whichever is later, or who later becomes a member of the Union and all Employees hired on or after such date shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members for the period from such date of ratification or approval or the date of later becoming a member or, in the case of Employees hired on or after such date of ratification or approval, thirty (30) days after hire, whichever of these dates is later until the termination of this Contract, except that an Employee may terminate this condition of employment by giving written notice to the Company and

the Union of such termination, and, if applicable, his or her withdrawal from membership in the Union, by registered mail, return receipt requested, and postmarked within the ten (10) day calendar period immediately preceding 11:59 P.M., July 27, 1971.

"2. The condition of employment specified in Paragraph 1 shall not apply during the periods of formal separation* from the bargaining unit by any such Employee but shall reapply to such Employee on the thirtieth (30th) day following his or her return to the bargaining unit.

*The term 'formal separation' includes transfers out of the bargaining unit, removal from the payroll of the Company, and Leaves of Absence of more than one (1) month duration.

"3. The company may inform Employees and applicants for employment of their rights and obligations under the provisions of this article.

"4. This article shall apply only in those States and the District of Columbia where the law permits the Union to enter into this type of union security agreement. If during the term of this Contract the Union shall become duly authorized under the laws of any other State to enter into this type of union security agreement, the effective date of this article as to Employees in such State shall be the date upon which the Company receives proper written evidence from the Union that it is fully qualified to enter into such an agreement in such State."

An "all-union" referendum election under the provisions

of 1969 Perm. Supp., C.R.S. 1963, 80-4-6(1) (d)[3] has not been held with respect to any of the collective bargaining agreements. The primary issue in this appeal is whether the provisions of the Colorado Labor Peace Act, C.R.S. 1963, 80-4-1, *et seq* (as amended), operate to preclude enforcement of the union-security provisions contained in the various agreements.

The district court opinion recognized that federal law almost totally preempts state law in the area of labor relations, but that neither the National Labor Relations Act, 29 U.S.C. § 151, *et seq* (1964),[4] the Labor-Management Relations Act (hereinafter the Taft-Hartley Act) – see particularly 29 U.S.C. § 164(b) (1964) – nor any other federal law preempts the provisions of the Colorado Labor Peace Act regulating "all-union" security agreements, 1969 Perm. Supp., C.R.S. 1963, 80-4-6(1) (d). The district court concluded that section 80-4-6(1) (d)[5] of the Colorado Labor Peace Act prohibits "any union security clause contained in any collective bargaining agreement as long as the clause contains any mandate which compels an employee's financial support or allegiance to the

[3]Section 80-4-6(1) (d) makes it an unfair labor practice:

"(1) (d) To encourage or discourage membership in any labor organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees, in a collective bargaining unit, where three-quarters or more of his employees have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the director. The director shall declare any such all-union agreement terminated whenever he finds that the labor organization involved unreasonably has refused to receive as a member any employee of such employer, and each such all-union agreement shall be made subject to this duty of the director. Any person interested may come before the director, as provided in section 80-4-8, as amended, and ask the performance of this duty.

[4]Otherwise known as The Wagner Act.

[5]Now section 8-3-108(1) (c), C.R.S. 1973.

labor organization regardless of name, including, but not limited to, the union shop, agency shop, modified union shop, modified agency shop, discriminatory hiring halls, maintenance of dues, maintenance of membership and the like" in the absence of a referendum election under the Colorado Labor Peace Act. The district court further found that this provision of the Colorado Labor Peace Act was applicable to employers engaged in interstate commerce doing business within the State of Colorado. The court refused to construe the provision as covering only union shop clauses. Throughout the opinion, the court emphasized that the fundamental purpose of the Colorado Labor Peace Act was to protect the right of each individual employee to determine for himself whether or not to engage in union activity. In the absence of a referendum approving the agreement, the court held that any negotiated "all-union" security agreement was invalid. The court also noted that the Colorado Labor Peace Act must be construed to allow employees the freedom to withdraw from union activity in the absence of the required referendum. On the basis of these conclusions of law, the district court declare that each of the disputed clauses here in issue was invalid and unenforceable because no all-union referendum had been conducted pursuant to 1969 Perm. Supp., C.R.S. 1963, 80-4-6(1) (d). Moreover, the court held that C.W.A. could not rely on the invalid clauses to effect a discharge of any employee refusing to comply with the terms thereof, and that the respondents lawfully refused the demands for the discharge of the employees.

All-Union Agreements

Plaintiff, C.W.A. argues that the union security clauses here in issue are not "all-union agreements" because "all" of the employees of the two employers are not required to be members of a single labor organization. Correlatively, C.W.A.

argues that Colorado only proscribes the "closed shop" form of union security. We disagree.

An "all-union agreement" is defined in C.R.S. 1963, 80-4-2(8)[e] as:

> ". . . an agreement between an employer and a collective bargaining unit representing some or all of his employees, whereby all of the employees of an employer in a craft or an establishment are required to be members of a single labor organization."

C.W.A. emphasizes the use of the word "all" in the above definition and concludes that the present union security clauses are not subject to regulation since they do not require membership in C.W.A. by "all" of the respective employers' employees in a collective bargaining unit. Generally, the instant union-security agreements fall into two categories: maintenance of membership agreements [the 1968 Plant Division and Traffic Department agreements between C.W.A. and Mountain States; and contracts C.W.A.-12 and C.W.A.-JC-12 between C.W.A. and Western Electric]; and modified agency shop agreements [the 1971 Plant and Traffic agreement between C.W.A. and Mountain States; and contracts C.W.A.-13 and C.W.A.-JC-13 between C.W.A. and Western Electric]. Under neither of the above types of agreements were all employees in the affected bargaining units required to become members of C.W.A. Moreover, "escape" periods were provided in the agreements during which time employees could sever any obligation to retain membership and/or pay dues to C.W.A.

Generally, under a maintenance of membership provision, employees who have become members of the union are re-

[e]Now section 8-3-104(1), C.R.S. 1973.

quired to maintain their membership in good standing as a condition of employment. The escape clause may be utilized by the employees to renounce their membership. Under an agency shop agreement, non-union employees whom the union represents as part of the collective bargaining unit must pay, as a condition of their continued employment, an amount equivalent to the sums paid by union employees for initiation fees and dues. Union membership is not required by the agency shop agreement. The present agency shop agreements were modified as a consequence of the "escape" clause features of the contracts.

The interpretation of "all-union agreement" which C.W.A. advances would subvert important policy declarations embodied in the Colorado Labor Peace Act. C.R.S. 1963, 80-4-4,[7] provides that employees shall be free to join or refrain from joining or assisting labor organizations:

> "Such rights of employees and each and all of them are essential rights and nothing herein contained shall be so construed as to infringe upon or have any operation as against or in conflict with such rights and each and all of them." C.R.S. 1963, 80-4-4.

This language evinces an intent on the part of the legislature to protect the working man's right to freely chart his own course with regard to labor organization activities. Section 80-4-6(1) (d) is a further manifestation of that legislative intent in that it severely restricts the circumstances in which an employee may be subjected to "all-union agreements." If C.W.A. were to prevail in its argument that only "closed shop" agreements are regulated by section 80-4-6(1) (d), no compulsory union provision would be subject to regulation as long as

[7]Now section 8-3-106, C.R.S. 1973.

a single employee were exempt from compelled payment of dues or their equivalent. Under such circumstances, the union would be free to ignore with impunity the referendum provisions of the statute and also demand compliance with any union security device other than a closed shop agreement.

In view of the emphatic language contained in the legislative declaration of rights of employees, C.R.S. 1963, 80-4-4, regulation of "all-union agreements" is not limited to closed shop agreements. The fact that section 80-4-2(8) defines "all union agreement" in terms of a union "membership" requirement, and the agreements herein did not require "membership" *per se,* does not deter us from our conclusion. Compulsory monetary support of a union is the "practical equivalent" of compulsory membership. *Retail Clerks v. Schermerhorn,* 373 U.S. 746, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963); *see also NLRB v. General Motors Corp.,* 373 U.S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963). In our opinion, any financial obligation imposed upon employees pursuant to a collective bargaining agreement executed and sought to be enforced in Colorado has features of compulsory unionism and as such is to be considered an "all-union agreement" under C.R.S. 1963, 80-4-2(8).

We interpret the word "establishment" in 80-4-2(8) to mean a recognized or defined group of employees, not necessarily *all* of the employees in a particular collective bargaining unit. The statute expressly states that the agreement may be between an employer and a collective bargaining unit representing "some" of his employees. Hence, the fact that some of the employees of Mountain States or Western Electric may not have been subject to the compulsory union-security provisions in issue does not exclude such provisions from regulation under 80-4-6(1) (d). Absent the requisite referendum, union-security clauses such as the ones here in issue are invalid and

unenforceable under the Colorado Labor Peace Act. *But cf., Building Construction Trades Council, AFL v. American Builders, Inc.*, 139 Colo. 236, 337 P.2d 953 (1959).

Necessity of a "Collective Bargaining Unit"

The union-security provision of the Colorado Labor Peace Act, 1969 Perm. Supp., C.R.S. 1963, 80-4-6(1) (d), provides that encouragement of membership in a labor organization by discrimination "in regard to hiring, tenure, or other terms or conditions of employment" is an unfair labor practice. The statute, however, delineates an exception to the general rule:

> " . . . [A]n employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees, *in a collective bargaining unit*, where three-quarters or more of his employees shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the director." [Emphasis added.]

C.W.A. contends that a "collective bargaining unit" as defined by the Colorado Labor Peace Act is a condition precedent to the holding of a referendum under section 80-4-6(1) (d). In our opinion, the statute plainly directs that the referendum should be conducted among the employees of a collective bargaining unit. The Colorado Labor Peace Act, C.R.S. 1963, 80-4-2(6),[8] defines "collective bargaining unit" as:

> ". . . an organization selected by secret ballot, as provided in section 80-4-5, by a majority vote of the employees of one employer employed within the state who vote at an election for the selection of such unit, provided

[8]Now section 8-3-104(4), C.R.S. 1973.

> that where a majority of such employees engaged in a single craft, division, department, or plant shall have voted, by secret ballot, that the employees of such single craft, division, department or plant shall constitute their collective bargaining unit, it shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative or representatives where a majority of the employees in each separate unit shall have voted so to do by secret ballot, as provided in section 80-4-5."

All of the bargaining units involved in this appeal have been recognized or certified by the National Labor Relations Board, and no evidence suggests that any of them were established by a secret ballot election pursuant to section 80-4-2(6). In our view, a secret ballot election, as described by section 80-4-2(6), is the exclusive method by which a collective bargaining unit subject to the "all-union" referendum provisions of section 80-4-6(1) (d) may be recognized. Correlatively, we hold that a collective bargaining unit, as defined by section 80-4-2(6), is a condition precedent to any labor organization's right to enter into an all-union agreement with an employer under Colorado law. Inasmuch as no secret ballot election was conducted for the purpose of establishing a collective bargaining unit authorized to enter into an all-union agreement with Mountain States and Western Electric, C.W.A. is not entitled to the enforcement of the all-union agreements provisions which are, in our opinion, invalid. Even if such an election had been held and an appropriately authorized collective bargaining unit had been established, the union security provisions here in issue would be invalid and unenforceable because of the lack of employee approval through an all-union referendum.

Federal Preemption

C.W.A. urges that this court should declare section 80-4-6(1) (d) invalid on grounds of federal preemption. C.W.A. contends that the definition of "collective bargaining unit" defined by section 80-4-2(6), and operative in section 80-4-6(1) (d), is preempted by the definition of "collective bargaining unit" contained in section 9 of the National Labor Relations Act, 29 U.S.C. § 151, *et seq* (1964).

We agree that certification or recognition under the Federal Act is different than the recognition/definition section of the Colorado Labor Peace Act. The Colorado Labor Peace Act requires a secret ballot election conducted by the division of labor in which a majority of the employees of the employer or a majority of the employees in a craft must vote. In *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 89 S.Ct. 1918, 23 L.Ed.2d 547 (1969), however, the Supreme Court of the United States recognized that the duty to bargain may be established under the Federal Act by methods other than by a secret ballot election:

> "The most commonly traveled route for a union to obtain recognition as the exclusive bargaining representative of an unorganized group of employees is through the Board's election and certification procedures under §9(c) of the Act. . . . A union is not limited to a Board election, however, in addition to §9, the present Act provides in §8(a) (5) . . . as did the Wagner Act in § 8(5), that '[i]t shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a). Since section 9(a) in both the Wagner Act and the present Act, refers to the representative as the one "designated

> or selected" by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented "convincing evidence of majority support."' Almost from the inception of the Act, then, it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish majority status by other means under the unfair labor practice provision of §8(a) (5) – by showing convincing support, for instance, by union-called strike or by strike vote, or, as here, by possession of cards signed by a majority of the employees authorizing the union to represent them for collective bargaining purposes."

No one disputes that the employers in this appeal are engaged in commerce and are subject to the various provisions of the National Labor Relations Act and the Labor-Management Relations Act of 1946, as amended, 29 U.S.C. §141, *et seq.* The federal pre-emption doctrine was restated in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 991 S.Ct. 1909, 29 L.Ed.2d 493 (1971), where the Supreme Court said:

> "The constitutional principles of preemption, in whatever particular field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter."

The *Lockridge* case affirmed the principles established in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959), where the United States Supreme Court declared:

"When it is clear or may fairly be assumed that the activities which a state purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct to plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law."[9]

C.W.A. urges that the recognition or certification procedures outlined in section 80-4-2(6) of the Colorado Labor Peace Act are preempted by federal principles relating to recognition or certification of a collective bargaining unit. On this basis, C.W.A. contends that the utilization of the state certification procedures in the context of the state statute regulating union security provisions, 80-4-6(1) (d), renders the latter provision invalid and unenforceable. We need not speculate on the question of whether Colorado's procedures for establishing a collective bargaining unit are preempted by federal law in any context other than the one here in issue. We concern ourselves with the certification procedure only as it relates to the state's power to regulate union security clauses in collective bargaining agreements.

In that context, the policies embodied in the National Labor Relations Act and the Labor-Management Relations Act have been made expressly clear by the United States Supreme Court. The regulation of union security provisions is not a matter of exclusive federal concern, but states are free to pursue their own more restrictive policies. *Algoma Plywood &*

[9]§7, 29 U.S.C. §157;
§8, 29 U.S.C. § 158.

Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 69 S.Ct. 584, 93 L.Ed. 691 (1949).

We recognize that section 8(a) (3) of the Taft-Hartley Act, 29 U.S.C. §158(a) (d) (1964), disclaimed a national policy hostile to the closed-shop or other forms of union security agreement. *Algoma Plywood & Veneer Co., supra.*[10] Section 14(b), however, provided that:

"[N]othing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in and State or Territory in which such execution or

[10]Section 8(a) (3) reads as follows:

"It shall be unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act. or in any other statute of the United States shall preclude any employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in Section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

application is prohibited by State or Territorial law." 29 U.S.C. § 164(b).

According to *Algoma Plywood & Veneer Co., supra,* section 14(b) was included in the act to "forestall the inference that federal policy was exclusive in the matter of union security." *See also Retail Clerks Local 125 v. Schermerhorn,* 375 U.S. 96, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963). *See generally, Oil, Chemical & Atomic Workers International Union, AFL-CIO, et al. v. Mobil Oil Corp., et al.,* ____ U.S. ____, 92 L.R.R.M. 2737 (June 14, 1976). State power, pursuant to § 14(b), begins with the actual negotiation and execution of the type of agreement described by § 14(b). *Retail Clerks Local 125 v. Schermerhorn, supra.* Negotiation and execution of the contested agreements between C.W.A. and Mountain States and between C.W.A. and Western Electric has occurred, and thus the state's power under § 14(b) has become operative.

The issue of a state's power to recognize or certify collective bargaining units must not be confused with the state's power to regulate union-security agreements. In *Algoma Plywood & Veneer Co., supra,* the United States Supreme Court held that "[t]he character of activities left to State regulation is not changed by the fact of certification." We agree. In Colorado, a "collective bargaining unit" for purposes of the union security agreement provision of the Colorado Labor Peace Act, may be something different than a collective bargaining unit for other purposes of labor-management relations. In the context of section 80-4-6(1)(d), a collective bargaining unit is a unique entity which may only be established purusant to the requirements of section 80-4-2(6). Viewed as such, the procedures for establishing a collective bargaining unit under the Colorado Labor Peace Act are merely an incident of the state's power to prohibit the application of union security agreements

under the permissive grant of authority contained in § 14(b) of the Taft-Hartley Act. The application of section 80-4-2(6) to the union security provisions of the Colorado Labor Peace Act is severable from its application in other contexts of the Act.

A valid all-union agreement may only be entered after the establishment of a collective bargaining unit in accordance with section 80-4-2(6). Having failed to properly define such collective bargaining units prior to entering the agreements here in issue, C.W.A. cannot properly demand that the employers enforce these invalid agreements.

Prohibition Under § 14(b)

C.W.A. contends that states, pursuant to § 14(b), are allowed to "prohibit" but not to "regulate" union security agreements. No matter how this distinction may be interpreted, § 14(b) does allow states to prohibit the "application" of union security agreements. In *Algoma Plywood & Veneer Co., supra,* the United States Supreme Court stated:

> "It is argued, however, that the effect of this section is to displace State law which 'regulates' but does not wholly 'prohibit' agreements requiring membership in a labor organization as a condition of employment. But if there could be any doubt that the language of the section means that the Act shall not be construed to authorize any 'application' of a union-security contract, such as discharging an employee, which under the circumstances 'is prohibited' by the State, the legislative history of the section would dispel it. . . ."

See also Retail Clerks v. Schermerhorn, 375 U.S. 96, 84 S.Ct.

219, 11 L.Ed.2d 179 (1963). The provisions of section 80-4-6(1) (d) are an important incident of the state's power to prohibit the application of union security provisions such as the ones here in issue. That power has not been supplanted by federal law.

The fact that § 14(b) refers to "membership" does not mean that state power to regulate union security agreements only extends so far as union or closed-shop agreements. *Retail Clerks Union v. Schermerhorn,* 373 U.S. 746, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963), held that an agreement conditioning employment upon the payment of sums equal to initiation fees and monthly dues was within the § 8(a) (3) proviso, and within the scope of § 14(b), and, thence, subject to invalidation by state law. The Court, in *Schermerhorn I,* stated that whatever may be the status of "less stringent union-security arrangements, the agency shop is within § 14(b)." *NLRB v. General Motors Corp., supra.* The modified agency shop clauses here in issue are hardly less stringent than the agency shop clause in the first *Schermerhorn* case. The limited "escape" provisions included in these agreements were of relatively inconsequential effect when measured against the more obvious purpose of the agreements – to insure C.W.A.'s security as the exclusive bargaining representative of the employees of Mountain States and Western Electric.

In short, Colorado was entitled under §14(b) to enact section 80-4-6(1)(d) of the Colorado Labor Peace Act, and the state's power to prohibit the application of the union security provisions here in issue is not preempted by federal law.

The enactment of § 14(b) would have been a meaningless gesture unless it was designed to affect a state's power over

employers and employees engaged in interstate commerce, and that is the only circumstance in which Congress could possibly have ceded power to the states under § 14(b). Therefore, section 80-4-6(1)(d) applies to union security clauses in collective bargaining agreements negotiated and executed by multi-state employers engaged in interstate commerce and doing business in Colorado.

Accordingly, we hold that the disputed clauses of the collective bargaining agreements between C.W.A. and Mountain States and between C.W.A. and Western Electric are union security clauses subject to state control under the Colorado Labor Peace Act. As enacted, the clauses were invalid because they were not approved through an all-union referendum by an appropriately designated employee group. C.W.A. may not rely on these clauses to effectuate a discharge of an employee refusing to comply with the terms thereof. Mountain States and Western Electric lawfully refused C.W.A.'s demand that the employees be discharged.

Accordingly, the judgment of the district court is affirmed.
MR. CHIEF JUSTICE PRINGLE dissents.

No. 26651 and No. 26797 – Communications Workers of America v. Western Electric Company, et al.

MR. CHIEF JUSTICE PRINGLE dissenting:

I respectfully dissent. Since the overwhelming majority of this court feels differently than I do, I shall not write at length or in depth.

I think there is no disagreement that the National Labor Relations Act, as amended, pre-empts labor relations from state regulation except where such is specifically authorized by the Act itself. Section 14(b) of the Taft-Hartley amendment does provide that states may *prohibit,* and I emphasize the word

used is *prohibit*. the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory. It does not, in its express language, allow states to regulate or do anything other than prohibit such agreements.

I would recall to the majority that Taft-Hartley was passed after a rather bitter battle, and that its terms therefore, should be strictly applied. It makes sense that the compromise was that union and agency shops may be entirely prohibited by a state, but if there was to be regulation, that regulation must be uniformly applied throughout the country under the terms of the National Labor Relations Act, rather than apply 50 different standards as to how and when union and agency shops might be negotiated.

I know the time-worn legal cliche that whatever a state can prohibit it can regulate. But this is not the situation for its application. We are here dealing with original pre-emption of the entire field by the federal government and the cession back to the states of a portion of that field. As I have pointed out, the history of that cession does not permit this court to reach out, as I think it does here, to grant the state powers not expressly given it by the Act itself. I do not read *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 69 S.Ct. 584, 93 L.Ed. 691 (1949) to hold otherwise. I do read several National Labor Relations Board decisions to be in accordance with my view. *Cyclone Sales, Inc.*, 115 NLRB 431 (1956); *Western Electric Co.*, 84 NLRB 1019 (1949); *Northland Greyhound Lines, Inc.*, 80 NLRB 288 (1948).

2. Order of Colorado Supreme Court Denying Communications Workers of America's Petition for Rehearing and Supplemental Petition for Rehearing.

IN THE SUPREME COURT
OF THE STATE OF COLORADO

Communications Workers of
America, an unincorporated
labor association,

Petitioner-Appellant,

26651 & 26797 v.

Western Electric Company,
et al.,

Appeal from the
District Court of the
City and County of Denver

Respondent-Appellee.

Upon consideration of the petition of petitioner-appellant for rehearing and the supplemental petition of petitioner-appellant for rehearing, it is this day ordered that the opinion of the court be, and hereby is, modified, and as modified petitions for rehearing be, and the same hereby are, denied.

3. Judgment of Colorado Supreme Court

IN THE SUPREME COURT
OF THE STATE OF COLORADO

Communications Workers of
America, an unincorporated
labor association,

Plaintiff-Appellant,

26651 & 26797 v.

Western Electric Company, Incorporated, a New York corporation, et al.,

Appeal from the District Court of City and County of Denver

Defendants-Appellees.

This cause having been brought to this court as an appeal to review the judgment of the District Court of the City and County of Denver, and having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and now being sufficiently advised in the premises,

It is this day ordered and adjudged that the judgment of said District Court be, and the same hereby is, affirmed, and that this cause be remanded to said District Court for such other and further proceedings, according to law, as shall be necessary to the final execution of the judgment of said District Court in the cause, notwithstanding the said appeal.

By the Court. En Banc. July 7, 1976.

4. Letter Dated July 6, 1976 from Clerk of the Colorado Supreme Court to Attorneys for Appellant.

Clerk's Office

SUPREME COURT
State of Colorado
Denver 80203

July 6, 1976

Case No. 26651 and 26797
Communications Workers of America

v.

Western Electric Company, et al

Mr. Clay R. Smith,
Mr. John W. McKendree,
Attorneys and Counselors,
1050 Seventeenth St., Suite 1818,
Denver, Colorado 80202

Gentlemen:

Please substitute the enclosed pages 1, 2, 18, 20, 21 and 28 for the like numbered pages of the opinion of the court filed in the above numbered and titled case on June 7, 1976. The opinion was modified and as modified the petition for rehearing and supplemental petition for rehearing were denied.

Yours very truly,

RICHARD D. TURELLI, Clerk.
By s/Florence Walsh
Deputy Clerk

APPENDIX C

Text of Statutory Provisions Pertinent to Appeal.

1. Full text of Colorado Labor Peace Act*

8-3-101. Short title. This article shall be known and may be cited as the "Labor Peace Act".

8-3-102. Legislative declaration. (1) The public policy of the state as to employment relations and collective bargaining, in the furtherance of which this article is enacted, is declared to be as follows:

(a) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(b) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever legitimate controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recog-

*All citations to the Labor Peace Act and the text herein are taken from Colorado Revised Statutes 1973.

nized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly or indirectly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, intimidation, restraint, or coercion.

(c) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation, an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own free choosing without intimidation or coercion from any source.

(d) All rights of persons to join labor organizations or unions and their rights and privileges as members thereof should be recognized, safeguarded, and protected. No person shall be denied membership in a labor organization or union on account of race, color, religion, sex, or by any unfair or unjust discrimination. Arbitrary or excessive initiation fees and dues shall not be required, nor shall excessive, unwarranted, arbitrary, or oppressive fines, penalties, or forfeitures be imposed. The members are entitled to full and detailed reports from their officers, agents, or representatives of all financial transactions and shall have the right to elect officers by secret ballot and to determine and vote upon the question of striking, not striking, and other questions of policy affecting the entire membership.

(e) In order to preserve and promote the interests of the public, the employee, and the employer alike, the state shall establish standards of fair conduct in employment rela-

tions and provide a convenient, expeditious, and impartial tribunal by which these interests may have their respective rights and obligations adjudicated, without limiting the jurisdiction of the courts to protect property, and to prevent and punish the commission of unlawful acts. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

(f) It is declared to be the common law of the state that no act which if done by one person would constitute a crime under the common law or statutes of this state is any less a crime if committed by two or more persons or corporations acting in concert, and no act which under the common law or statutes of this state is a wrongful act for which any person has a remedy against the wrongdoer if done by one person is any less a remedial wrong if done by two or more persons or corporations in concert, nor shall the injured person be denied relief in the courts of this state in law or equity except as such relief may be expressly limited by statute.

8-3-103. Construction. Except as specifically provided in this article, nothing in this article shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this article be so construed as unlawfully to invade the right to freedom of speech. Nothing in this article shall be so construed or applied as to deprive any employee of any unemployment benefit which he might otherwise be entitled to receive under any other laws of the state of Colorado. The fact that any provisions of this article have been adopted from other states, or the language of the statutes of other states has been used in the preparation of this article shall not be taken to adopt as the construction of such provisions the decisions of

other states construing such statutes of other states. It is not the intention of the legislature in adopting this article necessarily to adopt the construction that may have been placed upon similar provisions by the courts of other states.

8-3-104. Definitions. As used in this article, unless the context otherwise requires:

(1) "All-union agreement" means an agreement between an employer and a collective bargaining unit representing some or all of his employees, whereby all of the employees of an employer in a craft or an establishment are required to be members of a single labor organization.

(2) "Authority" means the state of Colorado; any board, commissions, agency, or instrumentality thereof; or any district, municipality, city and county, county, or combination thereof, which acquires or operates a mass transportation system.

(3) "Collective bargaining" means negotiation by an employer and the representative of a majority of his employees who are in a collective bargaining unit or their representatives concerning representation or terms and conditions of employment of such employees in a mutually genuinue effort to reach an agreement with reference to the subject under negotiation.

(4) "Collective bargaining unit" means an organization selected by secret ballot, as provided in section 8-3-107, by a majority vote of the employees of one employer employed within the state who vote at an election for the selection of such unit, except that, where a majority of such employees engaged in a single craft, division, department, or plant have voted by secret ballot that the employees of such single craft, division, department, or plant shall constitute their collective

bargaining unit, it shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative or where a majority of the employees in each separate unit have voted to do so by secret ballot, as provided in section 8-3-107.

(5) "Commission" means the industrial commission of Colorado.

(6) "Commissioner" means a member of the industrial commission of Colorado.

(7) "Company union" means an organization of employees, the members of which are the employees of only one employer.

(8) "Director" means the director of the division of labor.

(9) "Division" means the divsion of labor in the department of labor and employment.

(10) "Election" means a proceeding in which the employees authorized by this article cast a secret ballot to select a collective bargaining unit or for any other purpose specified in this article, including elections conducted by the division of labor or by any tribunal having competent jurisdiction or whose jurisdiction has been accepted by the parties.

(11) (a) "Employee" includes any person, other than an independent contractor, domestic servants employed in and about private homes, and farm and ranch labor, working for another for hire in the state of Colorado in a nonexecutive or nonsupervisory capacity, and shall not be limited to the em-

ployees of a particular employer and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer; and

(b) Who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or his representative;

(c) Who has not been found to have committed or to have been a party to any unfair labor practice under this article;

(d) Who has not obtained regular and substantially equivalent employment elsewhere; or

(e) Who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased, except by an employer's unlawful refusal to bargain, and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employee who is subject to the Federal Railway Labor Act.

(12) "Employer" means a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted under the terms of subsection (11) of this section, and includes any person acting on behalf of any such exployer within the scope of his authority,

express or implied. The term does not include the state or any political subdivision thereof, except where the state or any political subdivision thereof acquires or operates a mass transportation system, or any carrier by railroad, express company, or sleeping car company subject to the Federal Railway Labor Act, Title 45, U.S.C.A., or any labor organization or anyone acting in behalf of such organization other than when he is acting as an employer-in-fact.

(13) (a) "Labor dispute" means any controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or process or details of collective bargaining. The entering into of a contract for an all-union agreement or the refusal of an employer to enter into an all-union agreement shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee. No jurisdictional dispute or controversy between two or more unions as to which of them has or shall have jurisdiction over certain kinds of work; or as to which of two or more bargaining units constitutes the collective bargaining unit as to which the employer stands impartial or ready to negotiate or bargain with whichever is legally determined to be such bargaining unit, shall constitute a labor dispute.

(b) The general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges or refuses to employ an employee on account of incompetence, neglect of work, unsatisfactory service, or dishonesty; but the discharge of an employee or the refusal to employ an employee shall constitute a labor dispute only when such discharge or refusal to employ is founded upon membership in a union or

labor organization or activity therein or when such discharge or failure to employ is in violation of a contract.

(c) No controversy between an employer and his employee shall constitute a labor dispute until after a bargaining unit in accordance with this article is created and a dispute arises between the bargaining unit and the employer.

(d) No labor dispute shall arise from the refusal of an employer to join a union or to cease work in his own business.

(14) "Local union" means an organization of employees employed in this state, the membership of which includes employees of one or more employers, whether or not they are affiliated with an organization of employees employed in one or more other states.

(15) "Mass transportation system" means any system which transports the general public by bus, rail, or any other means of conveyance moving along prescribed routes, except any railroad subject to the Federal Railway Labor Act, Title 45, U.S.C.A.

(16) "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

(17) "Representative" includes any person who is the duly authorized agent of a collective bargaining unit.

(18) "Secondary boycott" includes causing or threatening to cause, and combining or conspiring to cause or threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated or continued, whether by:

(a) Withholding patronage, labor, or other beneficial business intercourse;

(b) Picketing;

(c) Refusing to handle, install, use, or work on particular materials, equipment, or supplies; or

(d) Any other unlawful means in order to bring him against his will into a concerted plan to coerce or inflict damage upon another or to compel the party with whom the labor dispute exists to comply with any particular demands.

8-3-105. Director to administer - commission to make rules and regulations therefor. (1) The director of the division shall enforce and administer the provisions of this article.

(2) The commission may adopt reasonable rules and regulations relative to the administration of this article and relative to the conduct of all elections and hearings pertaining to mass transportation as defined in section 8-3-104 (15). Such rules and regulations shall not be effective until ten days after the date thereof.

8-3-106. Rights of employees. In accordance with the provisions of this article, employees have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. Each employee also has the right to refrain from any of such activities. The rights of each employee are essential rights, and nothing contained in this article shall be so construed as to infringe upon or have any operation against or in conflict with such rights.

8-3-107. Representatives and elections. (1) A unit chosen for the purpose of collective bargaining shall be the exclusive representative of all of the employees in such unit, if the majority of the employees of one employer, or the majority of the employees of one employer in a craft, vote at an election. But employees individually have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer shall confer with them in relation thereto.

(2) When a question arises concerning the selection of a collective bargaining unit, it shall be determined by secret ballot, and the director, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department, or plant as to the selection of the collective bargaining unit.

(3) When a question arises concerning the selection of a collective bargaining unit, the director shall determine the question thereof by taking a secret ballot of employees and certifying in writing the results thereof to the bargaining units involved and to their employer. There shall be included on any ballot for the selection of a bargaining unit the names or suitable description of each bargaining unit submitted to the director and claimed to be the appropriate unit by an employee or group of employees participating in the election; except that the director, in his discretion, may exclude from the ballot any bargaining unit which, at the time of the election, stands deprived of its rights under this article by reason of a prior adjudication of its having engaged in an unfair labor practice. The ballot shall be so prepared as to permit a vote against representation by any unit named on the ballot. The director's certification of the results of any election shall be conclusive as to the findings included therein, unless reviewed

in the manner provided by section 8-3-110(8) and (11), for review of orders of the director.

(4) Questions concerning the selection of collective bargaining units may be raised by petition of any employee or his employer or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the director shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the director that sufficient reason therefor exists.

(5) The director shall investigate and determine which persons shall be qualified and entitled to vote at any election held by him and shall prepare and certify a poll list of such qualified voters and shall file the same in the office of the director not later than twenty-four nor earlier than forty-eight hours preceding the time of such balloting. The list shall be available to the collective bargaining units whose interests are involved in the election. On request of any employee, the list shall be prepared so as to show separately which employees are entitled to vote for general representation of the employees and which employees are entitled to vote separately for craft representation or representation of any one of several plants of a common employer. No person whose name is not so certified shall be entitled to vote at such election. The director shall protect the secrecy of the ballot and shall take all proper measures for the accurate counting thereof and shall certify the result thereof and immediately file such certificate in the records of the division and make the same available for the inspection of any person interested. The bargaining units so elected and certified shall be the respective representatives of

the employees so electing them and recognized as such under this article. The names of all persons voting at the election for the selection of a bargaining unit shall be certified to the division and filed in its records and shall constitute the voting roll for said bargaining unit for all purposes under this article. The name of any person leaving such employment shall be removed from the roll, except that any employee whose name appears on said voting roll may have his name withdrawn from said roll by notice in writing to the division.

8-3-108. What are unfair labor practices. (1) It is an unfair labor practice for an employer, individually or in concert with others to:

(a) Interfere with, restrain, or coerce his employees in the exercise of the rights guaranteed in section 8-3-106;

(b) Initiate, create, dominate, or interfere with the formation or administration of any labor organization or contribute financial support to it; except that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where such activities or use create no additional expense to the employer;

(c) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in

a collective bargaining unit where three-quarters or more of his employees have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the director. The director shall declare any such all-union agreement terminated whenever he finds that the labor organization involved unreasonably has refused to receive as a member any employee of such employer, and each such all-union agreement is made subject to this duty of the director. Any person interested may come before the director, as provided in section 8-3-110, and ask the performance of this duty.

(d) Refuse to bargain collectively with the representatives of his employees in any collective bargaining unit; except that where an employer with reasonable cause files with the division a petition requesting a determination as to bargaining unit representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been ceritifed to him by the director;

(e) Enter into an all-union agreement except in the manner provided in paragraph (c) of this subsection (1);

(f) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(g) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer has accepted;

(h) Discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this article;

(i) Deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally and terminable at any time by the employee's giving at least thirty days' written notice of such termination;

(j) Employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this article;

(k) Make, circulate, or cause to be circulated a blacklist as described in section 8-2-110;

(l) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(m) Require a potential employee to furnish preemployment application information regarding said applicant's record of civil or military disobedience, unless any such matters resulted in a plea of guilty or a conviction by a court of competent jurisdiction.

(2) It is an unfair labor practice for an employee, individually or in concert with others to:

(a) Coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 8-3-106, or to intimidate his family or any member thereof, picket his domicile, or injure the person or property of such employee or his family or of any member thereof;

(b) Coerce, intimidate, or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 8-3-106, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;

(c) Violate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award;

(d) Refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination, after appeal, if any, of any tribunal having competent jurisdiction of the same or whose jurisdiction the employees or their representatives accepted;

(e) Cooperate in engaging in, promoting, or inducing picketing, boycotting, or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;

(f) Hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment; or to obstruct or interfere with entrance to or egress from any place of employment; or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance;

(g) Engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use, or disposition of materials, equipment, or services;

(h) Take, retain, or remain in unauthorized possession of property or any part thereof of the employer, or to engage in any concerted effort to interfere with production, except by leaving the premises in an orderly manner for the purpose of going on strike;

(i) Engage in a sit-down strike on the premises or property of the employer;

(j) Fail to give the notice of intention to strike provided in section 8-3-113;

(k) Commit any crime or misdemeanor in connection with any controversy as to employment relations;

(l) Demand or require any stand-in employee to be hired or employed by an employer, or to demand or require that the employer employ or pay for an employee to stand by or stand in for work being done by other employees, or to require the employer to employ or pay for any employee not required by the employer or necessary for the work of the employer;

(m) Do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2) of this section.

(3) It is an unfair labor practice for an employee, individually or in concert with others, or for a labor organization or any of its agents to:

(a) Induce or encourage the employees of an employer

to engage in a strike or concerted refusal in the course of their employment, or by any means to force or require an employer or any one or more employees to refrain from or prevent the use of any material, device, tool, or equipment intended or calculated to reduce the cost of the work;

(b) Require or force an employer to use any materials or do any work or render any service in connection with any task, job, work, or service as a condition of using any labor-saving device, equipment, tool, or instrument in the performance of such task, job, work, or service;

(c) Impose on any employee any fine, penalty, or forfeiture because such employee has used, is using, or has attempted to use a labor-saving device;

(d) (I) Engage in or induce or encourage employees of any employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service where an object thereof is forcing or requiring any employer to assign particular work to employees in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order of the director or certification determining the bargaining representative for employees performing such work; but nothing contained in this subsection (3) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer). Whenever a complaint is filed charging that any person or labor organization is engaged in the unfair labor practice defined in this paragraph (d), the director shall hear and determine the dispute concerning the assignment of work

out of which such complaint arises, unless within ten days the parties to the dispute provide evidence to the director that the dispute is properly adjusted, in which case the complaint shall be dismissed by the director.

(II) Upon the filing of a complaint under this paragraph (d), the director shall make a preliminary investigation, and, if he finds that there is reasonable cause that the complaint is true, he may issue an order directing that the employees or labor organization cease and desist from striking, picketing, or refusing to handle or work on goods pending a resolution by the director of the dispute out of which the complaint arises.

(III) Upon the failure or refusal of any person or labor organization against whom such order is issued to comply with this order or direction, the district court of the district wherein the strike, picketing, or refusal to handle or work on goods takes place may, upon application of the director, issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

(e) With regard to the entirety of this subsection (3), the following shall apply: Such material, device, tool, or equipment is germane to the employees' craft and not injurious to the employees' health and safety or the public generally, and nothing in this subsection (3) shall negate the rights of an employer and a labor organization to bargain collectively pursuant to subsection (1)(d) of this section.

(4) It is an unfair labor practice to do or cause to be done, on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1), (2), and (3) of this section.

8-3-109. What are not unfair labor practices. (1) It is not an unfair labor practice for any employer to refuse to grant a closed shop or all-union agreement or to accede to any proposal therefor as provided in this article.

(2) The right of both employer and employee freely to express, declare, and publish their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this article, nor shall the exercise of such right constitute an unfair labor practice. No strike shall be lawful unless it is authorized by a majority vote of the employees in the union involved taken by secret ballot such as is provided in this article.

8-3-110. Prevention of unfair labor practices. (1) Any controversy concerning unfair labor practices may be submitted to the division in the manner and with the effect provided in this article; but nothing in this article shall prevent the pursuit of equitable or legal relief in courts of competent jurisdiction, nor shall it be any ground for refusal of such relief that all of the administrative remedies provided in this article before the division have not been exhausted.

(2) Upon the filing with the division by any party in interest of a complaint in writing on a form provided by the division charging any person with having engaged in any specific unfair labor practice, the division shall mail a copy of such complaint to all persons so charged. Any other person claiming interest in the dispute or controversy, as an employer, an employee, or representative thereof, shall be made a party upon application. The director may bring in additional parties by service of a copy of the complaint. Only one such complaint shall issue against a person with respect to a single controversy, but any such complaint may be amended in the dis-

cretion of the director at any time prior to the issuance of a final order based thereon. The persons so complained of have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The director shall fix a time for the hearing on such complaint, which shall not be less than ten nor more than forty days after the filing of such compaint. Notice shall be given to the complainant and to each party named in the pleadings by service on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. In case a party in interest is located without the state and has no known post office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the director and hearings may be held at such places as the director designates. The director may initiate and file any such complaint of his own motion or at the request of any interested person. Should the director file such a complaint on request, he shall not disclose the name or interest of the person upon whose request the complaint is filed, if in his judgment such disclosure would tend to prejudice the interest of any person who may be affected by any order that the director may enter upon such complaint.

(3) The director has the power to issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by the Colorado rules of civil procedure, and all such depositions shall be taken upon commissions issued by the director. No person shall be excused from attending and

testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the director on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of the state of Colorado. No individual shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him. An individual so testifying shall not be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.

(4) Any person who willfully and unlawfully fails or neglects to appear or testify or to produce books, papers, and records as required, upon application to a district court, shall be ordered to appear before the director to testify or produce evidence if so ordered, and failure to obey such order of the court may be punished by the court as a contempt thereof.

(5) Each witness who appears before the director by his order or subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon presentation of properly verified vouchers approved by the director and charged to the proper appropriation for the division.

(6) A complete record shall be kept of all proceedings had before the director, and all testimony and proceedings shall be taken down by the reporter appointed by the director. Such proceedings shall not be governed by the technical rules of evidence, but by such rules as are prescribed by the commission for administrative hearings.

(7) After the final hearing the director shall promptly make and file his findings of fact upon all of the issues involved in the controversy and his order which shall state his determination as to the rights of the parties. Pending the final determination of any controversy before him, the director, after hearing, may make interlocutory findings and orders, which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed; suspend his rights, immunities, privileges, or remedies granted or afforded by this article as the director may specify, but not more than one year; and require an employer to take such affirmative action, including reinstatement of employees with or without pay, as the director may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

(8) The director may authorize a deputy or referee to take evidence and to make findings and report them to the director. Any party in interest who is dissatisfied with the findings or order of the director may file a written petition with the commission to review such findings or order, and the filing of such petition for review shall stay any such order of the director.

(9) The director, on his own motion, may set aside, modify, or change any of his findings or orders at any time within twenty days from the date thereof if he discovers any mistake therein or upon the ground of newly discovered evidence.

(10) If any party fails or neglects to obey an order of the director while the same is in effect, the director may file a

complaint in the district court of the county wherein such person resides or usually transacts business for the enforcement of such order for appropriate temporary relief or restraining order, and shall certify and file in the court the record in the proceedings, including all documents and papers on file in the matter, and pleadings and testimony upon which such order was entered, and the findings and order of the director. Upon the filing the director shall cause notice thereof to be served upon such party by mailing a copy to his last known post office address, and thereupon the court has jurisdiction of the proceedings and of the question determined therein. Said action may thereupon be brought on for hearing upon such order by the director serving ten days' written notice upon the respondent, subject, however, to the Colorado rules of civil procedure for a change of the place of trial or the calling in of another judge. Upon such hearing the court may confirm, modify, or set aside the order of the director and enter an appropriate decree. No objection that was not urged before the director shall be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances. The findings of fact made by the director, if supported by credible and competent evidence in the record, shall be conclusive. The court in its discretion may grant leave to adduce additional evidence before the court where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the director. The director may modify his findings as to facts, or make new findings by reason of such additional evidence, and he shall file such modified or new findings with the same effect as his original findings and shall file his recommendations, if any, for the modification or setting aside of his original order. The court's judgment and decree shall be final; except that the same shall be subject to appellate review as provided by law.

(11) Within thirty days from the date of the order of the commission reviewing an order of the director, as provided in subsection (8) of this section, any party aggrieved thereby may file a complaint in the district court for the county in which he or any party resides or transacts business for review of the decision and order of the commission, subject, however, to provisions of law for a change of the place of trial or the calling in of another judge. Where different parties in the same proceeding file complaints for review in two or more courts having proper jurisdiction, the jurisdiction of the court in which the first complaint was filed shall be exclusive, and the other complaints shall be transferred to it. Such complaints shall state the grounds upon which a review is sought and shall be served with the summons. Service upon the secretary of the commission or any member of the commission is deemed completed services on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are respondents, and the commission shall mail one copy to each respondent. If the court is satisfied that a party in interest has been prejudicied because of exceptional delay in the receipt of a copy of the order of the commission, it may extend the time another thirty days in which such action may be commenced. The commission, within ten days after the complaint is filed, shall file in said court the record in the proceedings, as provided in subsection (10) of this section. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' written notice to the other. Upon such hearing the court may confirm, modify, or set aside the order of the commission and enter an appropriate decree. Except as specifically provided otherwise in this subsection (11), the proceedings shall be the same as provided for in subsection (10) of this section.

(12) In any proceedings for review of an order of the

commission, the court shall disregard any irregularity or error unless it affirmatively appears that the complaining party was prejudiced thereby.

(13) Commencement of proceedings under subsections (10) or (11) of this section, unless otherwise specifically ordered by the court, shall operate as a stay of the commission's order.

(14) Complaints filed under this section shall have preference over any ordinary civil case pending in the district court, and shall be heard expeditiously, and the district court shall always be deemed open for the trial thereof.

(15) Substantial compliance with the procedures of this article is sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(16) The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act or unfair labor practice alleged.

(17) The director also has the power by himself and on his own motion to initiate proceedings in the manner provided in this section. It is likewise the duty of the director to so initiate a proceeding in his own name whenever complaint is made to him by any party in interest if it appears to the director that the disclosure of the name of the complainant, either as an employee or group of employees or as an employer or agent or representative of the employer, would jeopardize the rights or interests or standing of any party in interest. The proceedings so initiated by the director shall be conducted in the same manner and have the same effect as provided for in this section.

(18) (a) The director has the power and it is his duty in carrying out the public policy of the state, either upon his own initiative or upon the complaint of any party in interest or any organization or persons representing any public interests, if there is picketing which in the opinion of the director might tend to lead to riots, disturbances, or assaults or disturb public peace or injure the property or persons of individuals, to limit the number of pickets that may be permitted; and to prescribe the distance from any plant, entrance, or exit where such picketing, including not only the number of persons picketing but also the manner or method thereof; and to prevent the use of weapons of any kind or threats or intimidation.

(b) Upon the failure or refusal of any person against who any such order or direction is issued to comply with such order or direction, the district court of the district wherein the picketing takes place or the violation occurs, upon application of the director, may issue injunctive relief in the manner provided in the Colorado rules of civil procedure for courts of record in Colorado.

8-3-111. Protection of employees when authority acquires certain operations. (1) Before any authority may acquire and operate any property of a privately or publicly owned mass transportation system, fair and equitable protective arrangements, as determined by the director, shall be made to insure certain rights of employees. Such protective arrangements shall include, without being limited to, such provisions as may be necessary to accomplish the following objectives:

(a) The preservation of existing rights, privileges, and benefits of employees under existing collective bargaining agreements between the mass transportation system and the employees thereof, including the continuation of all pension

rights and benefits of the employees and their beneficiaries;

(b) The continuation of all collective bargaining in any situation existing at the time of such acquisition and the assurance of employment of all the employees of such mass transportation system so acquired;

(c) The protection of all individual employees with respect to their employment, including priorities, seniorities, and right of advancement when in agreement with any existing collective bargaining agreement;

(d) Training and retraining programs of employees and managing personnel.

(2) The contract whereby an authority acquires any property of a privately or publicly owned mass transportation system shall specify with particularity, the terms and conditions of all the protective arrangements set forth in this section, including all other protective arrangements which may be added through collective bargaining or by direction of the director.

(3) The determination of the sufficiency of protective arrangements shall be made by the director in accordance with such rules and regulations as the commission may from time to time establish.

8-3-112. Arbitration. (1) Parties to a labor dispute may agree in writing to have the director act as arbitrator or to name arbitrators to arbitrate all or any part of such dispute, and thereupon the director shall have the power so to act. The director shall appoint as arbitrators only competent, impartial, and disinterested persons. Proceedings in any such arbitration shall be as provided by the rules of arbitration under the Colorado rules of civil procedure.

(2) All parties to any labor dispute when the employer is an authority shall submit to arbitration upon written order of the director when such written order is the result of the procedure set forth in section 8-3-111(3). Any order so given shall be subject to appeal within five days of the receipt of such order by either the employee's representative or the authority, who are parties in interest. Appeal of the order shall be made to the district court in the judicial district where the most substantial number of the employees concerned are employed. Such court shall either confirm, deny, amend, or continue the order within sixty days following the application for appeal. The results of any arbitration conducted in accordance with the procedure set forth in this article shall be binding upon all parties in interest with the right of appeal to any court of competent jurisdiction on the grounds that the director or arbitration board has been unfair, capricious, or unjust in its conduct, determinations, or award.

8-3-113. Mediation. (1) The director has power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon his own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the director has any power of compulsion in mediation proceedings. The director shall provide necessary expenses and order reasonable compensation for such mediators as he may appoint.

(2) Where, as provided by this article, the exercise of the right to strike by the employees of any employer engaged in the state of Colorado in the production, harvesting, or initial processing, the latter after leaving the farm, of any farm or

dairy product produced in this state would tend to cause the destruction or serious deterioration of such product, the employees shall give to the division at least thirty day's notice of their intention to strike, and, in the case of employees in all other industries or occupations, at least twenty days' notice of their intention to strike. The division shall immediately notify the employer of the receipt of such notice. Upon receipt of such notice, the director shall take immediate steps to effect mediation, if possible. In the event of the failure of the efforts to mediate, the director shall endeavor to induce the parties to arbitrate the controversy. Any strike called or made effective before the expiration of twenty days from the date of such notice shall constitute an unfair labor practice.

(3) Where the exercise of the right to strike is desired by the employees of any authority, the employees or their representatives shall file with the division written notice of intent to strike not less than forty calendar days prior to the date contemplated for such strike. Within twenty days of the filing of the notice, the director shall enter an order allowing or denying the strike based on the grounds of whether or not such strike would interfere with the preservation of the public peace, health, and safety in accordance with rules and regulations of the commission. Any order denying a strike under this section shall include an order to arbitrate in accordance with section 8-3-112. Such arbitration shall be entered into not later than one hundred days from the filing of the notice of intent to strike. Immediately upon receipt of a notice of intent to strike, the director shall take steps to effect mediation, if possible. In the event of failure to mediate, the director shall endeavor to induce the parties to arbitrate the contrversy. Any strike before the expiration of forty days from the giving of notice of intent to strike or in violation of an order of the di-

rector, unless such order is changed on appeal or otherwise, shall constitute an unfair labor practice.

(4) The commission shall prescribe reasonable rules of procedure for mediation under this section.

8-3-114. Duties of the attorney general and district attorneys. Upon the request of the director or the commission, the attorney general or the district attorney of the county in which a proceeding is brought before the district court for the purpose of enforcing or reviewing an order of the director or the commission shall appear and act as counsel for the director or the commission in such proceeding and in any proceeding to review the action of the district court affirming, modifying, or reversing each other.

8-3-115. Employer and employee committees. The director, from time to time, may appoint joint, standing, or special committees composed in equal numbers of representatives of employees and employers. The director may refer to any such committee for its study and advice any matters concerning the relations of employers and employees or the operation of this article.

8-3-116. Interference with commission - director - officer of division. Any person who willfully assaults, resists, prevents, impedes, or interferes with any member of the commission, the director, or any officer, deputy, agent, or employee of the division, or any of its agencies in the performance of duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

8-3-117. Existing contracts unaffected. Nothing in this article shall operate to arbrogate, annul, or modify any valid agreement respecting employment relations existing on or before April 1, 1943.

8-3-118. Jurisdiction to issue restraining orders or injunctions. (1) Except as otherwise provided in this article, no court has jurisdiction to issue in any case involving or growing out of a labor dispute any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment, regardless of any promise, undertaking, contract, or agreement to do such work or to remain in such employment;

(b) Becoming or remaining a member of any labor organization or any employer organization, regardless of any undertaking or promise as is described in section 8-3-119;

(c) Paying or giving to or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

(d) Aiding, by all lawful means, any person who is being proceeded against in, or is prosecuting any action or suit in, any court of this state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing as an organization to patronize any person with whom the organization has a labor dispute or requiring it to employ any person;

(g) Assembling peaceably to do or to organize to do any of the acts specified in this section or to promote lawful interests;

(h) Advising or notifying any person of an intention to do any of the acts specified in this section;

(i) Agreeing with other persons to do or not to do any of the acts specified in this section;

(j) Advising, urging, or inducing, without fraud, violence or threat thereof, others to do the acts specified in this section, regardless of any such undertaking or promise as is described in section 8-3-119;

(k) Doing in concert any acts specified in this section on the ground that the persons engaged therein constitute an unlawful combination or conspiracy.

8-3-119. Relations contrary to public policy. (1) The following is declared to be contrary to public policy and shall not afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise or against any other persons who may advise, urge, or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of the undertaking or promise: Every undertaking or promise made on or after April 1, 1943, whether written or oral, express or implied, between any employee or prospective employee and his employer, prospective employer, or any other individual, firm, company, association, or corporation, whereby:

(a) Either party thereto undertakes or promises to join or to remain a member of some specific labor organization or to join or remain a member of some specific employer organization or any employer organization; or

(b) Either party thereto undertakes or promises not to join or not to remain a member of some specific labor organization or of some specific employer organization or any employer organizations; or

(c) Either party thereto undertakes or promises that he will withdraw from an employment relation in the event that he joins or remains a member of some specific labor organization or any labor organization or of some specific employer organization or any employer organization.

8-3-120. Conflict of provisions. Wherever the application of the provisions of other statutes or laws conflict with the application of the provisions of this article, this article shall prevail; except that, in any situation where the provisions of this article cannot be validly enforced, the provisions of such other statutes or laws shall apply.

8-3-11. Civil liability for damages. (1) Any person who suffers injury because of an unfair labor practice has a right of action, jointly and severally, against all persons participating in said practice for damages caused to the injured person thereby.

(2) If, in accordance with this article or otherwise, persons otherwise unwilling to do so are induced to violate contracts of employment or for services or materials, any person injured thereby shall be entitled to recover and have judgment therefor at law against the persons, jointly and severally, so inducing the violation of such obligations.

8-3-122. Penalty for violation. Any person, firm, or corporation who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined for the first offense not less than fifty dollars nor more than one hundred dollars and for the second and subsequent offenses not less than one hundred dollars nor more than five hundred dollars, together with costs.

8-3-13. Nonapplicability of other statutes. The provisions of section 8-1-108, 8-1-120, 8-1-123, and 8-1-124 shall not apply to this article, but this article and the administration thereof are governed and controlled as to all matters contained in sections 8-1-108, 8-1-120, 8-1-123, and 8-1-124 by the special provisions of this article.

2. Text of Pertinent Provisions of Labor Management Relations Act of 1947, as amended.

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

• • •

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; *Provided,* That nothing in this Act, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organzation (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other

members or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropirate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*. That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be contrued to prohibit the waiving of hearings by stipulation for the purpose of

a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

"(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"(e) (1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a) (3), of a petition alleging the desire that such authority be rescinded the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

"(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

• • •

"(b) Nothing in this Act shall be construed as authoriz-

ing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

APPENDIX D

1. Notice of Appeal (July 19, 1976)

IN THE SUPREME COURT
OF THE
STATE OF COLORADO

NOS. 26651 & 26797

COMMUNICATIONS WORKERS OF AMERICA, an unincorporated labor association,	)	
Plaintiff-Appellant,	)	
v.	)	
WESTERN ELECTRIC COMPANY, INCORPORATED, a New York corporation, STATE OF COLORADO, DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF LABOR, JAMES M. SHAFFER, Executive Director, State of Colorado, Department of Labor and Employment, Division of Labor, INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, HENRY C. KIMBROUGH, in his capacity as a member of the Industrial Commission of the State of Colorado, ALBERT F. MANGAN, in his capacity as a member of the Industrial Commission of the State of Colorado, and KENNETH C. RUSSELL, in his capacity	)	NOTICE OF APPEAL

as a member of the Industrial Commission of Colorado, and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, a Colorado corporation.

Defendants-Appellees.

COMES NOW the above-captioned Plaintiff-Appellant, the Communications Workers of America [hereinafter, CWA], and gives notice that CWA hereby appeals to the United States Supreme Court from the final judgment of the Supreme Court of the State of Colorado affirming the judgment of the District Court in and for the City and County of Denver in the above-captioned matter. The judgment of the Supreme Court of the State of Colorado was entered on June 7, 1976 and modified on July 6, 1976.

This appeal is taken under 28 U.S.C. §1257(2).

Respectfully submitted,

LAW OFFICES OF JOHN W. McKENDREE

By s/John W. McKendree
John W. McKendree
Attorneys for Plaintiff-Appellant
1050 Seventeenth St., Suite 2500
Denver, CO 80202
Telephone: (303) 572-8585

Of Counsel:
Charles V. Koons, Esq.
Kane and Koons
1100 Seventeenth St., N.W.
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing NOTICE OF APPEAL, by depositing same in the U.S. Mail, first class postage prepaid, this 19th day of July, 1976, addressed as follows:

David R. Gorsuch, Esq.
Gorsuch, Kirgis, Campbell, Walker & Grover
1200 American National Bank Bldg.
Denver, CO 80202

David R. Hansen, Esq.
Mountain States Telephone & Telegraph Company
931 - 14th St., Suite 1300
Denver, CO 80202

John A. Criswell, Esq.
Criswell, Patterson & Ballentine
3780 S. Broadway
Englewood, CO 80110

Carl F. Eiberger, Esq.
DeMuth & Eiberger
1600 Western Federal Savings Bldg.
Denver, CO 80202

J. D. MacFarlane, Attorney General
200 E. Colfax Ave., Room 104
Denver, CO 80203

John Kezer, Esq.
Assistant Attorney General
1525 Sherman St.
Denver, CO 80203

Walter C. Brauer, Esq.
2422 Prudential Plaza
Denver, CO 80202

I further certify that I have mailed a true and correct copy of the foregoing NOTICE OF APPEAL, by depositing same in the U.S. mail, first class airmail postage prepaid, this 19th day of July, 1976 addressed as follows:

Rex H. Reed, Esq.
National Right to Work Legal
Defense Foundation, Inc.
8316 Arlington Blvd., Suite 600
Fairfax, VA 22030

s/John W. McKendree

2. Amended Notice of Appeal (September 9, 1976)

IN THE SUPREME COURT
OF THE
STATE OF COLORADO

NOS. 26651 & 26797

COMMUNICATIONS WORKERS OF AMERICA, an unincorporated labor association,

Plaintiff-Appellant,

v.

WESTERN ELECTRIC COMPANY, INCORPORATED, a New York corporation, STATE OF COLORADO, DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF LABOR, JAMES M. SHAFFER, Executive Director, State of Colorado, Department of Labor and Employment, Division of Labor, INDUSTRIAL COMMISSION OF THE STATE OF COLORADO, HENRY C. KIMBROUGH, in his capacity as a member of the Industrial Commission of the State of Colorado, ALBERT F. MANGAN, in his capacity as a member of the Industrial Commission of the State of Colorado, and KENNETH C. RUSSELL, in his capacity as a member of the Industrial Commission of Colorado, and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, a Colorado corporation.

Defendants-Appellees.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

AMENDED NOTICE is hereby given that the Communications Workers of America, the Appellant above-captioned, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Colorado affirming the judgment of the District Court in and for the City and County of Denver in the above-captioned matter. The final judgment of the Colorado Supreme Court

was entered on July 7, 1976 pursuant to an opinion initially issued on June 7, 1976 and modified on July 6, 1976.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Respectfully submitted,

LAW OFFICES OF JOHN W. McKENDREE

By s/John W. McKendree
Attorneys for Plaintiff-Appellant
1050 Seventeenth St., Suite 2500
Denver, CO 80202
Telephone: (303) 572-8585

Of Counsel:
Charles V. Koons, Esq.
Kane and Koons
1100 Seventeenth St., N.W.
Washington D.C. 20036

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, by depositing same in the U.S. Mail, first class postage prepaid, this 9th day of September, 1976, addressed as follows:

David R. Gorsuch, Esq.
Gorsuch, Kirgis, Campbell, Walker & Grover
1200 American National Bank Bldg.
Denver, CO 80202

David R. Hansen, Esq.
Mountain States Telephone & Telegraph Company
931 - 14th St., Suite 1300
Denver, CO 80202

John A. Criswell, Esq.
Criswell, Patterson & Ballentine
3780 S. Broadway
Englewood, CO 80110

Carl F. Eiberger, Esq.
DeMuth & Eiberger
1600 Western Federal Savings Bldg.,
Denver, CO 80202

J. D. MacFarlane, Attorney General
200 E. Colfax Ave., Room 104
Denver, CO 80203

John Kezer, Esq.
Assistant Attorney General
1525 Sherman St.
Denver, CO 80203

Walter C. Brauer, Esq.
2422 Prudential Plaza
Denver, CO 80202

I further certify that I have mailed a true and correct copy of the foregoing AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, by depositing same in the U.S. Mail, first class airmail postage prepaid, this 9th day of Septemeber, 1976 addressed as follows:

Rex H. Reed, Esq.
National Right to Work Legal
Defense Foundation, Inc.
8316 Arlington Blvd., Suite 600
Fairfax, VA 22030

John W. McKendree